

Exhibit A

Change Number M-91-03-01	Federal Facility Agreement and Consent Order <i>Change Control Form</i> Do not use blue ink. Type or print using black ink.	Date October 13, 2003
Originator Ecology		Phone (509)
Class of Change <input checked="" type="checkbox"/> I – Signatories <input type="checkbox"/> II – Executive Manager <input type="checkbox"/> III – Project Manager		
Change Title Modification of <u>Hanford Federal Facility Agreement and Consent Order</u> (Agreement) M-91 Series provisions.		
Description/Justification of Change¹ <p>The M-91 milestone series was originally created to establish schedules for the construction and operation of facilities the Parties believed would be needed to manage transuranic waste and low-level waste. These milestones also included requirements calling for the development of project management plans for these types of waste. Because efforts to establish facility milestones did not expedite the processing of waste, the Parties have agreed to modify this milestone series. (Continued on next page.)</p>		
Impact of Change¹ <p>Approval of this change package, an associated M-16-03-03 change package, and the accompanying Settlement Agreement, resolves DOE's appeal of Ecology's Administrative Order No. 03NWPKW-5494, DOE's appeal of Ecology's March 10, 2003 Final Determination, and all disputes concerning HFFACO milestones M-91-01 and M-91-03. The approved change package supersedes the former M-91 milestone series. (Continued on next page.)</p>		
Affected Documents <p>The <u>Hanford Federal Facility Agreement and Consent Order</u>, as amended, DOE's Annual Land Disposal Restrictions Report, the Hanford site Integrated Priority List (IPL).</p>		

¹ The descriptions in the "Description/Justification of Change" and "Impact of Change" sections provide general information intended to describe in broad outlines the import of these changes.. In the event of conflicts between these general sections and the Settlement Agreement and milestones, the Settlement Agreement and milestones prevail.

Ecology	_____	_____	Approved	_____	Disapproved
	Date				
DOE-RL	_____	_____	Approved	_____	Disapproved
	Date				
EPA	_____	_____	Approved	_____	Disapproved
	Date				

Description/Justification of Change (continued)

For purposes of this M-91-03-01 Change Package, the parties have agreed as follows:

1. All retrievably stored waste is suspected of being mixed waste;
2. Retrievably stored waste will be managed as mixed waste unless and until it is designated as non-mixed through the designation process (WAC 173-303-070 through 100);

This change request establishes enforceable compliance schedules for the retrieval, designation² and storage of all suspect mixed waste that is retrievably stored at Hanford. For mixed low-level waste (MLLW) that requires treatment and is currently in storage or will be newly generated, this package also includes compliance schedules for its treatment. This change package addresses issues of treatment and certification of mixed transuranic waste (TRUM) in light of pending litigation regarding the State's authority to impose such requirements. Specifically, and as set forth in more detail in the accompanying Settlement Agreement, requirements in this change package for treatment or certification of TRUM will not apply prior to a final appealable judgment on the merits is obtained in *Washington v. Abraham*, No. CT-03-5018-AAM, on the question of whether such wastes are subject to Land Disposal Restrictions (LDR) treatment requirements and LDR storage prohibitions, and will not apply thereafter with respect to any wastes determined by said judgment to be exempt from LDR treatment requirements and from LDR storage prohibitions by virtue of the 1996 WIPP Land Withdrawal Act Amendments, unless the judgment is reversed on appeal.

In regard to wastes disposed of prior to May 6, 1970, the parties acknowledge that the decisions regarding whether, when, and how much waste will be retrieved will be made as a result of RCRA corrective actions, RCRA closures, and CERCLA response actions. For operable units that include burial grounds where waste was disposed of before 1971, the HHFACO already requires completion of all 200 Area RI/FSs and RFI/CMSs by December 31, 2008, and completion of all 200 Area remedial actions by December 31, 2024. Following issuance of the decision documents for these Pre-1971 200 Area burial grounds, DOE will submit work plans to Ecology. The work plans will be submitted for approval pursuant to HHFACO Action Plan Section 11.6. DOE will submit draft change packages with the work plans and shall include proposed milestones, as required by Action Plan Section 11.6. Such change packages shall contain milestones for completion of remedial actions including but not be limited to milestones for retrieval, designation and, if required, certification of any transuranic waste that the decision documents determine must be retrieved.

For contact handled (CH) MLLW containing LDR constituents that is newly generated after June 30, 2009, DOE shall treat it to meet LDR treatment requirements in compliance with WAC 173-303-140 and by reference 40 CFR 268.

² As used in these introductory sections, "designation" refers to the process set out in WAC 173-303-070 through 100 for characterization of waste under RCRA and the Washington HWMA, and not to the term used in section 9(a)(1)(H) of the WIPP Land Withdrawal Act.

These milestones do not separately address the retrieval, storage, or treatment of Greater Than Category 3 (GTC3) waste because GTC3 waste is a sub-set of LLW. The retrieval, storage, and treatment of the mixed waste portion of waste that would be classified as GTC3 waste is addressed by the milestones in this change package that apply to MLLW.

Impact of Change (continued)

This change package adds interim milestones M-91-40 through -45. Interim milestones M-91-40 and -41 address the retrieval, designation and storage of Hanford's Retrievably Stored Waste (RSW). Interim milestone M-91-42 addresses the designation and treatment of newly generated contact handled (CH) waste and CH waste currently in above-ground storage. Interim milestone M-91-43 addresses newly generated remote handled (RH) low-level waste, newly generated boxes and large containers of CH low-level waste, RH low-level waste currently in above-ground storage, and boxes and large containers of CH low-level waste currently in above-ground storage. Interim milestone M-91-44 addresses newly generated RH transuranic waste, newly generated boxes and large containers of CH transuranic waste, RH transuranic waste currently in above-ground storage, and boxes and large containers of CH transuranic waste currently in above-ground storage. Interim milestone M-91-45 requires DOE to report annually to Ecology on DOE's progress in completing work relating to RH waste and boxes and large containers of RH and CH waste.

This change package also modifies several existing milestones. M-91-00 is revised to focus on completion of the acquisition or modification of facilities for retrieval, storage, and treatment of Hanford Site's RCRA mixed and suspect mixed transuranic and low-level waste. Except as expressly provided herein, the M-91 milestone series addresses RCRA suspect mixed and mixed wastes. Completion of these milestones does not preclude the later application of CERCLA authorities to the wastes addressed by this series. (Concurrent with the execution of this change package, DOE and EPA will execute a change package regarding facility requirements relative to capabilities for managing CERCLA TRU/TRUM waste. Ecology, EPA, and DOE have agreed to segregate RCRA and CERCLA milestone requirements in the interest of reaching a resolution of disputes and pending litigation between Ecology and DOE. Such agreement does *not* reflect a decision to abandon integrated cleanup strategies contemplated by other provisions of the HHFACO.) In addition, this change package adds to M-91-00 definitions applicable throughout the M-91 milestone series. M-91-01 establishes a date for completion of acquisition and modification of facilities and/or capabilities needed for storage and treatment/processing of Hanford Site Post 1970 RH-TRUM and suspect RH TRUM, TRUM in boxes and large containers, and suspect TRUM in boxes and large containers. M-91-03 requires periodic revision of DOE's TRUM and Mixed Low-Level Waste Project Management Plan (PMP).

Finally, this change package also deletes interim milestones M-91-07 and M-91-22, and target dates M-91-08-T01 and M-91-21-T01.

As noted above, to the extent that M-91 milestones address LDR treatment requirements and LDR storage prohibitions as applied to TRUM, they do not apply prior to a final appealable judgment on the merits of the LDR Storage and Treatment claim in *Washington v. Abraham*, No.

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CT-03-5018-AAM, and after such a judgment, only as set forth in the accompanying Settlement Agreement.

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IN RECOGNITION OF THE NEED TO MODIFY AGREEMENT REQUIREMENTS GOVERNING THE MANAGEMENT OF HANFORD SITE MIXED LOW-LEVEL WASTES (MLLW) AND TRANSURANIC WASTES, THE PARTIES AGREE AS FOLLOWS:

M-91-00	<p>COMPLETE THE ACQUISITION OF NEW FACILITIES, MODIFICATION OF EXISTING FACILITIES, AND MODIFICATION OF PLANNED FACILITIES NECESSARY FOR RETRIEVAL, STORAGE, AND TREATMENT PROCESSING OF ALL HANFORD SITE TRU/TRUM, LLMW, AND GTC3-RCRA MIXED AND SUSPECT MIXED LOW-LEVEL WASTE AND RCRA MIXED AND SUSPECT MIXED TRANSURANIC WASTE.</p> <p>COMPLIANCE WITH THE WORK SCHEDULES SET FORTH IN THIS M-91-SERIES IS DEFINED AS THE PERFORMANCE OF SUFFICIENT WORK TO ASSURE WITH REASONABLE CERTAINTY THAT DOE WILL ACCOMPLISH SERIES M-91 MAJOR AND INTERIM MILESTONE REQUIREMENTS.</p> <p>DOE INTERNAL WORK SCHEDULES (E.G., DOE APPROVED SCHEDULE BASELINES) AND ASSOCIATED WORK DIRECTIVES AND AUTHORIZATIONS SHALL BE CONSISTENT WITH THE REQUIREMENTS OF THIS AGREEMENT. MODIFICATION OF DOE CONTRACTOR BASELINE(S) AND ISSUANCE OF ASSOCIATED DOE WORK DIRECTIVES AND/OR AUTHORIZATIONS THAT ARE NOT CONSISTENT WITH AGREEMENT REQUIREMENTS SHALL NOT BE FINALIZED PRIOR TO APPROVAL OF AN AGREEMENT CHANGE REQUEST SUBMITTED PURSUANT TO AGREEMENT ACTION PLAN SECTION 12.0</p> <p>DEFINITIONS</p> <p>THE FOLLOWING DEFINITIONS APPLY TO THIS SERIES OF MILESTONES.</p> <p>"BOXES AND LARGE CONTAINERS" AS USED HEREIN IS DEFINED AS WASTE CONTAINERS THAT ARE NOT 55-GALLON DRUMS AND THAT CANNOT BE PLACED IN SUCH DRUMS.</p> <p>"DESIGNATION" AS USED HEREIN IS DEFINED AS THE PROCESS FOR DETERMINING: (1) WHICH CONTAINERS OF LOW-LEVEL WASTE ARE MLLW; AND, (2) WHICH CONTAINERS OF TRANSURANIC WASTE ARE MIXED TRANSURANIC WASTE (CH-TRUM OR RH-TRUM).</p>	TO BE DETERMINE D*
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DESIGNATION OF WASTE WILL BE PERFORMED PURSUANT TO WAC 173-303-070 THROUGH 100. THESE REGULATIONS ALLOW THE USE OF "ACCEPTABLE KNOWLEDGE," SURROGATE SAMPLING AND OTHER MEASURES FOR DESIGNATION TO MINIMIZE WORKERS' RADIATION EXPOSURE AND TO REDUCE COSTS. WHERE APPLICABLE, DOE INTENDS TO USE INFORMATION GATHERED THROUGH THE CERTIFICATION OF TRANSURANIC WASTE IN SUPPORT OF ITS DESIGNATION OF RELATED LOW-LEVEL WASTE STREAMS. WHERE APPROPRIATE, DOE WILL USE MEASURES ALLOWED UNDER STATE AND FEDERAL REGULATIONS TO PERFORM ACCURATE AND COST EFFECTIVE DESIGNATIONS OF LOW-LEVEL WASTE.

"LOW-LEVEL WASTE" AS USED HEREIN IS DEFINED AS RADIOACTIVE WASTE THAT IS NOT SPENT FUEL, HIGH-LEVEL WASTE, TRANSURANIC WASTE, BYPRODUCT MATERIAL, OR NATURALLY OCCURRING RADIOACTIVE MATERIAL. LOW-LEVEL WASTE INCLUDES BOTH "MIXED LOW-LEVEL WASTE" AND "NON-MIXED LOW-LEVEL WASTE." "MIXED LOW-LEVEL WASTE" (MLLW) IS LOW-LEVEL WASTE THAT IS SUBJECT TO RCRA OR 70.105 RCW. "NON-MIXED LOW-LEVEL WASTE" (LLW) IS LOW-LEVEL WASTE THAT IS NOT SUBJECT TO RCRA OR 70.105 RCW. LLW AND MLLW CAN BE CONTACT-HANDLED (CH), I.E., CH-LLW OR CH-MLLW, OR REMOTE-HANDLED (RH), I.E., RH-LLW OR RH-MLLW.

"CONTACT HANDLED" (CH) WASTE IS A WASTE PACKAGE WITH A SURFACE DOSE RATE LESS THAN 200 MILLIREM PER HOUR.

"REMOTE HANDLED" (RH) WASTE IS A WASTE PACKAGE WITH A SURFACE DOSE RATE EQUAL TO OR GREATER THAN 200 MILLIREM PER HOUR.

"RETRIEVABLY STORED WASTE" (RSW) AS USED HEREIN IS DEFINED AS WASTE THAT IS OR WAS BELIEVED TO BE CONTAMINATED WITH SIGNIFICANT CONCENTRATIONS OF TRANSURANIC ISOTOPES WHEN IT WAS PLACED IN THE 218-W-4B, 218-W-4C, 218-W-3A AND 218-E-12B BURIAL GROUND TRENCHES AFTER MAY 6, 1970. DURING THE RETRIEVAL PROCESS, CONTAINERS OF RSW WILL BE SEGREGATED INTO TWO CATEGORIES: (1) CH RSW AND (2) RH RSW. SUBSEQUENT ANALYSIS AND CATEGORIZATION OF RSW PURSUANT TO RCRA, CH. 70.105 RCW, THE ATOMIC

ENERGY ACT, AND THE WIPP LAND WITHDRAWAL ACT WILL RESULT IN MOST OR ALL OF THIS WASTE BEING CLASSIFIED AS ONE OF THE FOLLOWING TYPES OF WASTE: LLW, RH-LLW, CH-MLLW, RH-MLLW, CH-TRU, CH-TRUM, RH-TRU OR RH-TRUM. RSW DOES NOT INCLUDE WASTE IN CONTAINERS THAT HAVE DETERIORATED TO THE POINT THAT THEY CANNOT BE RETRIEVED AND STABILIZED (E.G. PLACED IN OVERPACKS) IN A MANNER THAT WOULD ALLOW THEM TO BE TRANSPORTED AND DESIGNATED WITHOUT POSING SIGNIFICANT RISKS TO WORKERS, THE PUBLIC OR THE ENVIRONMENT. WITH RESPECT TO ANY SUCH CONTAINERS, AND WITH RESPECT TO ANY RELEASE OF RSW, THE DECISION AS TO HOW TO MOVE FORWARD WILL BE DETERMINED THROUGH THE CLEANUP PROCESS SET FORTH IN RCRA, CH. 70.105 RCW, AND/OR CERCLA AS APPROPRIATE. THOSE PROCESSES MAY RESULT IN ADDITIONAL REQUIREMENTS FOR THE REMEDIATION OF SUCH WASTES.

"CAISSON WASTE" AS USED HEREIN IS DEFINED AS RSW IN THE 218-W-4B BURIAL GROUND CAISSONS ALPHA-1 THROUGH ALPHA-4.

"TRANSURANIC WASTE" AS USED HEREIN IS DEFINED AS WASTE THAT MEETS THE DEFINITION IN SUBSECTION (18) OF SECTION 2 OF THE WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT, PUB. L. 102-579. TRANSURANIC WASTE INCLUDES BOTH "MIXED TRANSURANIC WASTE" (TRUM) WASTE" AND "NON-MIXED TRANSURANIC WASTE" (TRU), AND COMPRISES THE FOLLOWING CATEGORIES: CH-TRU, CH-TRUM, RH-TRU, AND RH-TRUM.

"RETRIEVAL OF CH RSW" IS DEFINED AS UNCOVERING CH WASTES WITHIN DOE'S RSW TRENCHES, AND REMOVING SUCH CH WASTES FROM THE TRENCHES TO A PERMITTED AND COMPLIANT TREATMENT, STORAGE OR DISPOSAL FACILITY, THE ENVIRONMENTAL RESTORATION AND DISPOSAL FACILITY (ERDF) OR FOR WASTE DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100 AS NON-MIXED TO A STORAGE OR DISPOSAL FACILITY THAT DOE DETERMINES IS APPROPRIATE. STORAGE OF ANY RETRIEVED CH RSW THAT HAS NOT BEEN DESIGNATED AS NON-MIXED PURSUANT TO WAC 173-303-070 THROUGH -100 SHALL INCLUDE SECONDARY CONTAINMENT PURSUANT TO WAC 173-303-630(7).

"RETRIEVAL OF RH RSW" IS DEFINED AS UNCOVERING RH WASTES WITHIN DOE'S RSW TRENCHES AND CAISSONS, AND REMOVING SUCH RH WASTES FROM THE TRENCHES TO A PERMITTED AND COMPLIANT TREATMENT, STORAGE OR DISPOSAL FACILITY, THE ENVIRONMENTAL RESTORATION AND DISPOSAL FACILITY (ERDF) OR FOR WASTE DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100 AS NON-MIXED TO A STORAGE OR DISPOSAL FACILITY THAT DOE DETERMINES IS APPROPRIATE. STORAGE OF ANY RETRIEVED RH RSW THAT HAS NOT BEEN DESIGNATED AS NON-MIXED PURSUANT TO WAC 173-303-070 THROUGH -100 SHALL INCLUDE SECONDARY CONTAINMENT PURSUANT TO WAC 173-303-630(7).

NOTE: THE REQUIREMENTS OF THIS MILESTONE WITH REGARD TO THE ACQUISITION OF NEW FACILITIES, MODIFICATION OF EXISTING FACILITIES, AND MODIFICATION OF PLANNED FACILITIES NECESSARY FOR TREATMENT/PROCESSING OF RCRA MIXED AND SUSPECT MIXED TRANSURANIC WASTE DO NOT APPLY AS TO FACILITIES FOR LDR TREATMENT (OR FOR CERTIFICATION IN LIEU OF SUCH TREATMENT) OF MIXED TRANSURANIC WASTE PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN *WASHINGTON V. ABRAHAM*, NO. CT-03-5018-AAM, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT.

* NOTE: THE M-91 SERIES MILESTONES (INCLUDING THIS NOTE) DO NOT INCLUDE ANY REQUIREMENTS TO ESTABLISH SCHEDULES FOR THE MANAGEMENT OF PRE-1971 TRU/TRUM. SCHEDULES FOR THE MANAGEMENT OF PRE-1971 TRU/TRUM WILL BE ESTABLISHED, PURSUANT TO APPLICABLE PROVISIONS OF THE HFFACO OTHER THAN THE M-91 SERIES MILESTONES, FOLLOWING THE ISSUANCE OF OPERABLE UNIT RECORDS OF DECISION (RODS).

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COMPLETE THE ACQUISITION OF CAPABILITIES AND/OR ACQUISITION OF NEW FACILITIES, MODIFICATION OF EXISTING FACILITIES, AND OR MODIFICATION OF PLANNED FACILITIES NECESSARY FOR RETRIEVAL, DESIGNATION, STORAGE AND TREATMENT PROCESSING PRIOR TO DISPOSAL OF ALL HANFORD SITE POST 1970 RH TRU/TRUM AND SUSPECT RH TRUM, TRUM IN BOXES AND LARGE CONTAINERS, AND SUSPECT TRUM IN BOXES AND LARGE

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	<p>CONTAINERS.</p> <p>NOTE: THE REQUIREMENTS OF THIS MILESTONE WITH REGARD TO COMPLETING THE ACQUISITION OF CAPABILITIES AND/OR ACQUISITION OF NEW FACILITIES, MODIFICATION OF EXISTING FACILITIES AND/OR MODIFICATION OF PLANNED FACILITIES NECESSARY FOR TREATMENT/PROCESSING OF HANFORD SITE POST 1970 RH TRUM AND SUSPECT RH TRUM, TRUM IN BOXES AND LARGE CONTAINERS, AND SUSPECT TRUM IN BOXES AND LARGE CONTAINERS DO NOT APPLY AS TO CAPABILITIES AND FACILITIES FOR LDR TREATMENT (OR FOR CERTIFICATION IN LIEU OF SUCH TREATMENT) OF RH TRUM AND TRUM IN BOXES AND LARGE CONTAINERS PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN <i>WASHINGTON V. ABRAHAM</i>, NO. CT-03-5018-AAM, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT.</p>	
M-91-03	<p>SUBMIT REVISION OF THE HANFORD SITE TRU/TRUM AND MIXED LOW LEVEL WASTE PROJECT MANAGEMENT PLAN (PMP) TO ECOLOGY PURSUANT TO AND IN COMPLIANCE WITH THE REQUIREMENTS OF AGREEMENT SECTION 11.5 AND ECOLOGY'S MARCH 10, 2003 M-91 MILESTONE SERIES FINAL DETERMINATION. REVISIONS OF THE PMP SHALL ADDRESS RCRA MIXED AND SUSPECT MIXED TRANSURANIC AND LOW LEVEL WASTE AND WILL CONSIDER AND EXPRESSLY EVALUATE THE IMPACT ON M-91 RETRIEVAL, TREATMENT AND PROCESSING CAPABILITIES, THAT MAY RESULT FROM RETRIEVAL, TREATMENT AND/OR PROCESSING OF ANY OTHER TRANSURANIC OR SUSPECT TRANSURANIC WASTE INCLUDING BUT NOT LIMITED TO OFF-SITE TRANSURANIC WASTE AND HANFORD SITE TRANSURANIC WASTE GENERATED AFTER 1/1/03. DOE PMP REVISIONS OF THE PMP SHALL BE SUBMITTED ON 12/31/2003, 3/31/2009 AND 3/31/2013. EACH REVISION IS A DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THIS AGREEMENT.</p> <p>WITH RESPECT TO RH MIXED WASTE AND MIXED WASTE IN BOXES AND LARGE CONTAINERS, THE PMP SUBMITTED ON</p>	<p>DUE DATES AS INDICATED IN THE DESCRIPTIVE TEXT OF THIS MILESTONE</p>

12/31/2003 WILL SPECIFICALLY IDENTIFY MEASURABLE ACTIONS TO BE TAKEN BY DOE TO ACQUIRE CAPABILITIES TO MANAGE SUCH WASTES. THE PMP SHALL IDENTIFY SUCH MEASURABLE ACTIONS AT LEAST YEARLY.

NOTE: WITH RESPECT TO PMP REVISIONS ON 3/31/2009 AND 3/31/2013, THE REQUIREMENTS OF THIS MILESTONE CONCERNING PMP REVISIONS TO ADDRESS TRUM SHALL NOT APPLY PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN *WASHINGTON V. ABRAHAM*, NO. CT-03-5018, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT. IN ADDITION, THE PMP SUBMITTED ON 12/31/2003 WILL NOT BE REQUIRED TO CONTAIN PLANS AND SCHEDULES FOR THE LDR TREATMENT (OR CERTIFICATION IN LIEU OF SUCH TREATMENT AS PROVIDED FOR IN M-91-42 AND M-91-44) OF TRUM WASTE. WITHIN SIX MONTHS OF ECOLOGY'S APPROVAL OF DOE'S PROPOSAL OR ECOLOGY'S ISSUANCE OF A DETERMINATION PURSUANT TO THE ACCOMPANYING SETTLEMENT AGREEMENT, FOLLOWING RECEIPT OF A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN *WASHINGTON V. ABRAHAM*, NO. CT-03-5018-AAM, DOE SHALL REVISE THE PMP TO INCLUDE PLANS AND SCHEDULES FOR LDR TREATMENT (OR CERTIFICATION IN LIEU OF SUCH TREATMENT AS PROVIDED IN M-91-42 AND M-91-44) OF TRUM WASTE IN THE MANNER REQUIRED BY DOE'S APPROVED PROPOSAL OR ECOLOGY'S DETERMINATION.

DOE'S PMP REVISIONS WILL BE SUBMITTED TO ECOLOGY FOR REVIEW AND APPROVAL AS PRIMARY DOCUMENTS PURSUANT TO AGREEMENT ACTION PLAN SECTION 9.2.1. DOE SHALL IMPLEMENT THE PLAN AS APPROVED.

DOE'S 2003 ONCE APPROVED, THE PMP SUBMITTED ON 12/31/2003, IN ACCORDANCE WITH THIS MILESTONE WILL SHALL SUPERSEDE TRU/TRUM PMP'S THOSE PORTIONS OF PREVIOUSLY SUBMITTED DOE PMPs THAT CONCERNED RCRA MIXED WASTE, SUSPECT MIXED TRANSURANIC AND SUSPECT MIXED LOW LEVEL WASTE

M-91-05-T01	<p>COMPLETE AND SUBMIT RH TRU/TRUM, SUSPECT RH TRUM, TRUM IN BOXES AND LARGE CONTAINERS, AND SUSPECT TRUM IN BOXES AND LARGE CONTAINERS RETRIEVAL AND PROCESSING FACILITY(IES) ENGINEERING STUDY/FUNCTIONAL DESIGN CRITERIA STUDY TO ECOLOGY FOR FACILITIES REQUIRED BY M-91-01.</p> <p>THE TRU/TRUM ENGINEERING/FUNCTIONAL DESIGN CRITERIA STUDY WILL COVER ACTIVITIES/FACILITIES NOT CONSIDERED COMMERCIALY VIABLE AS DOCUMENTED IN THE APPROVED TRU/TRUM PMP AND ASSOCIATED AGREEMENT CHANGE REQUESTS.</p>	12/31/2007
M-91-07	COMPLETE PROJECT W-113 FOR POST-1970 CH TRU/TRUM RETRIEVAL.	9/30/2004
M-91-08-T01	COMPLETE CONSTRUCTION AND INITIATE HOT OPERATIONS OF RH AND LARGE SIZE TRU/TRUM PROCESSING FACILITY (A FINAL ACQUISITION SCHEDULE FOR THIS FACILITY WILL BE ESTABLISHED AS AN INTERIM MILESTONE NO LATER THAN DECEMBER 2000).	6/30/2005
M-91-12	COMPLETE THERMAL TREATMENT AND DISPOSAL OF AN ADDITIONAL 360 CUBIC METERS OF CONTACT HANDLED LLMW. THIS BRINGS THE CUMULATIVE TOTAL TO AT LEAST 600 CUBIC METERS OF CONTACT HANDLED LLMW THERMALLY TREATED.	12/31/2005
M-91-12A	COMPLETE THERMAL TREATMENT AND DISPOSAL OF AT LEAST 240 CUBIC METERS OF CONTACT HANDLED LLMW.	12/31/2004
M-91-15	COMPLETE ACQUISITION OF FACILITIES AND/OR CAPABILITIES AND INITIATE TREATMENT OF RH MLLW AND LARGE CONTAINER (CH) LLMW CH MLLW IN BOXES AND LARGE CONTAINERS.	6/30/2008
M-91-20	<p>T PLANT IS READY TO RECEIVE THE FIRST CANISTER OF K BASINS FLOOR AND PIT SLUDGE.</p> <p>THIS INTERIM MILESTONE WILL BE COMPLETE WHEN ALL T PLANT READINESS ACTIVITIES HAVE BEEN COMPLETED</p>	<p>12/31/2002</p> <p>[Completed]</p>

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	TO ACCEPT PIT AND FLOOR SLUDGE. READINESS IS DEFINED AS THE ISSUANCE OF THE READINESS TO PROCEED LETTER BY THE APPROVAL AUTHORITY.	
M-91-21-T01	<p>COMPLETE PHYSICAL ACTIVITIES AT NECESSARY TO STORE CANISTER AND FUEL WASH SLUDGE.</p> <p>THIS TARGET IS COMPLETE UPON THE DECLARATION OF COMPLETION OF MODIFICATIONS REQUIRED TO STORE CANISTER AND FUEL WASH SLUDGE IN T-PLANT.</p>	11-29-2003
M-91-22	<p>T-PLANT IS READY TO RECEIVE CANISTER AND FUEL WASH SLUDGE FROM K-BASINS.</p> <p>THIS INTERIM MILESTONE WILL BE COMPLETE WHEN ALL T-PLANT READINESS ACTIVITIES HAVE BEEN COMPLETED TO ACCEPT CANISTER AND FUEL WASH SLUDGE. READINESS IS DEFINED AS THE ISSUANCE OF THE READINESS TO PROCEED LETTER BY THE APPROVAL AUTHORITY.</p>	02-29-2004
M-91-40	<p>REGARDING THE RETRIEVAL AND DESIGNATION OF CONTACT-HANDLED (CH) RETRIEVABLY STORED WASTE (RSW) AND TREATMENT OF SUCH WASTES DESIGNATED AS MIXED TO MEET APPLICABLE FEDERAL AND STATE LAND DISPOSAL RESTRICTION (LDR) STANDARDS (ALL CH RSW WASTE REGARDLESS OF PACKAGE SIZE):</p> <p>1. DOE SHALL RETRIEVE ALL CH-RSW WITHIN BURIAL GROUNDS 218-W-4C, 218-W-4B, 218-W-3A, AND 218-E-12B BY DECEMBER 31, 2010. IN ACHIEVING THIS RETRIEVAL REQUIREMENT, DOE SHALL FIRST INITIATE RETRIEVAL AT ITS BURIAL GROUND 218-W-4C NO LATER THAN NOVEMBER 15, 2003, AND SHALL RETRIEVE RSW AT THE FOLLOWING RATES :</p> <ul style="list-style-type: none"> • 1,200 CUBIC METERS (CUMMULATIVE) BY 12/31/04, • 2,700 CUBIC METERS (CUMMULATIVE) BY 12/31/05, • 4,700 CUBIC METERS (CUMMULATIVE) BY 12/31/06, • 7,200 CUBIC METERS (CUMMULATIVE) BY 12/31/07, • 9,700 CUBIC METERS (CUMMULATIVE) BY 12/31/08, • 12,200 CUBIC METERS (CUMMULATIVE) BY 12/31/09, • COMPLETE RETRIEVAL OF CH-RSW BY 12/31/2010. 	<p>DUE DATES AS INDICATED IN THE DESCRIPTIVE TEXT OF THIS MILESTONE</p>

DOE SHALL CONTINUE RETRIEVAL ACTIONS IN 218-W-4C UNTIL ALL CH RSW IS RETRIEVED. SUBSEQUENT RETRIEVAL ACTIONS, SHALL BE UNDERTAKEN SEQUENTIALLY AT BURIAL GROUNDS 218-E-12B, 218-W-3A, AND 218-W-4B. RETRIEVAL OF WASTE OUT OF THE ORDERED SEQUENCE SHALL NOT BE COUNTED TOWARD THE MILESTONE REQUIREMENT UNLESS JOINTLY AGREED TO BY ECOLOGY AND DOE. DOE MAY REQUEST SUCH APPROVAL WITH RESPECT TO WASTE IN BOXES AND LARGE CONTAINERS. IN REVIEWING SUCH REQUEST, ECOLOGY WILL CONSIDER AMONG OTHER FACTORS; WHETHER THE WASTE CONTAINER HAS BEEN UNCOVERED, INSPECTED AND FOUND TO BE INTACT AND NOT POSING A THREAT TO HUMAN HEALTH AND THE ENVIRONMENT (OR RE-PACKAGED TO PREVENT RELEASE TO THE ENVIRONMENT) AND EXISTING DOCUMENTATION DOES NOT INDICATE THE PRESENCE OF FREE LIQUIDS. ECOLOGY MAY CONDITION ITS AGREEMENT ON A DOE COMMITMENT TO PERFORM ADDITIONAL SPECIFIED REQUIREMENTS (E.G. CONTAINER INSPECTIONS, COVERING CONTAINERS, ETC.) TO PREVENT RELEASES TO THE ENVIRONMENT.

THE RETRIEVAL SEQUENCE IS PRIORITIZED BASED ON ENVIRONMENTAL RISK AND INTENDED TO ENSURE THAT DOE FIRST RETRIEVE WASTE FROM THE 218-W-4C BURIAL GROUND, WHICH HAS POTENTIAL CARBON TETRACHLORIDE CONTAMINATION ISSUES, AND TO SUBSEQUENTLY RETRIEVE WASTES FROM BURIAL GROUND 218-E-12B AND 218-W-3A WHERE CONTAINERS WERE PLACED IN CONFIGURATIONS THAT ALLOWED DIRECT CONTACT WITH THE SOIL. DOE SHALL CONCLUDE RETRIEVAL ACTIONS WITH BURIAL GROUND 218-W-4B.

2. AS RSW RETRIEVAL PROCEEDS, DOE SHALL SAMPLE AND ANALYZE TRENCH SUBSTRATES WITH THE PURPOSES OF DETERMINING WHETHER OR NOT RELEASES OF CONTAMINANTS TO THE ENVIRONMENT HAVE OCCURRED, AND, IF SO, THE NATURE AND EXTENT OF CONTAMINATION.

SUCH SAMPLING AND ANALYSIS SHALL BE IN ACCORDANCE WITH ECOLOGY APPROVED SAMPLING AND ANALYSIS PLANS (SAP). THE SAP WILL BE

DEVELOPED USING A DQO PROCESS TO ESTABLISH SAMPLING REQUIREMENTS FOR SAMPLING OF BURIAL GROUND VENT RISERS AND SUBSTRATE SOILS. DOE PROVIDED ECOLOGY WITH A DRAFT 218-W-4C SAP ON 8/12/03. ECOLOGY'S INTENTION IS TO ISSUE A FINAL SAP WITHIN 30 DAYS. WITH RESPECT TO THE REMAINING BURIAL GROUNDS, DOE WILL PROVIDE ECOLOGY WITH UPDATED SAPS, IF NEEDED, FOR REVIEW AND APPROVAL AT LEAST 45 DAYS PRIOR TO STARTING RETRIEVAL IN EACH BURIAL GROUND. DOE WILL IMPLEMENT APPROVED SAPS, AS A REQUIREMENT OF THIS MILESTONE, DURING RETRIEVAL OF ALL RSW.

THE RESULTS OF BURIAL GROUND VENT AND SUBSTRATE SAMPLING AND ANALYSIS PURSUANT TO APPROVED SAPS SHALL BE SUBMITTED TO ECOLOGY BY LETTER REPORTS QUARTERLY. SUCH REPORTS SHALL DOCUMENT RESULTS AND METHODOLOGIES, SHALL ASSESS RESULTS AGAINST REGULATORY REQUIREMENTS, SHALL INCLUDE A DESCRIPTION (OR DESCRIPTIONS) OF DOCUMENTED CONTAMINANT RELEASES TO THE ENVIRONMENT, AND SHALL DESCRIBE PLANNED AND/OR SCHEDULED ADDITIONAL WORK.

3. WITHIN 90 DAYS OF RETRIEVAL, DOE SHALL DESIGNATE ALL CH RSW RETRIEVED FROM THE RSW TRENCHES PURSUANT TO WAC 173-303-070 THROUGH 100, AND SHALL SPECIFICALLY IDENTIFY INDIVIDUAL BOXES AND LARGE CONTAINERS THAT CANNOT BE DESIGNATED BASED ON AVAILABLE PROCESS KNOWLEDGE. FOR THE BOXES AND LARGE CONTAINERS DETERMINED TO BE LOW-LEVEL WASTE THAT CANNOT BE DESIGNATED BASED ON THE AVAILABLE PROCESS KNOWLEDGE, DOE SHALL DESIGNATE SAID WASTE ACCORDING TO THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100, BY DECEMBER 31, 2008 (SIX MONTHS AFTER THE RH AND LARGE CONTAINER MLLW FACILITIES AND/OR CAPABILITIES ARE REQUIRED TO BE OPERATIONAL). FOR BOXES AND LARGE CONTAINERS DETERMINED TO BE TRANSURANIC WASTE THAT CANNOT BE DESIGNATED BASED ON THE AVAILABLE PROCESS KNOWLEDGE, DOE SHALL DESIGNATE SAID WASTE ACCORDING TO THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100, BY DECEMBER 31, 2012 (SIX MONTHS

AFTER THE RH AND LARGE CONTAINER TRANSURANIC FACILITIES AND/OR CAPABILITIES ARE REQUIRED TO BE OPERATIONAL).

4. FOR ALL RETRIEVED CH-RSW DETERMINED TO BE LOW LEVEL WASTE AND DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100, AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE SHALL TREAT SUCH WASTES TO MEET LDR REQUIREMENTS IN ACCORDANCE WITH THE SCHEDULE PROVIDED IN MILESTONE M-91-42(2) AND M-91-43(3).
5. IN REGARD TO THE CARBON TETRACHLORIDE VAPOR PLUME IN THE VADOSE ZONE IN THE VICINITY OF TRENCH 4 IN BURIAL GROUND 218-W-4C, DOE SHALL:
 - START VAPOR EXTRACTION BY NOVEMBER 15, 2003, TO REDUCE CARBON TETRACHLORIDE VAPORS.
 - START RETRIEVAL IN TRENCH 4 BY JANUARY 15, 2004
 - COMPLETE RETRIEVAL OF TRENCH 4 BY DECEMBER 31, 2006. (WITH THE EXCEPTION OF THOSE BOXES AND LARGE CONTAINERS THAT THE PARTIES HAVE AGREED, IN WRITING, MAY BE RETRIEVED OUT OF SEQUENCE.)

RETRIEVAL WILL CONTINUE IN TRENCH 4 UNTIL IT IS COMPLETE. VAPOR EXTRACTION AND RETRIEVAL OPERATIONS IN TRENCH 4 WILL BE INTEGRATED BY DOE TO MINIMIZE POTENTIAL WORKER EXPOSURE TO CARBON TETRACHLORIDE VAPORS, AND TO MITIGATE ANY POSSIBLE RELEASES OF CARBON TETRACHLORIDE FROM TRENCH 4 CONTAINERS.

6. FOR ALL RETRIEVED CH-RSW DETERMINED TO BE TRANSURANIC WASTE AND DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100, AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE SHALL TREAT SUCH WASTES TO MEET LDR REQUIREMENTS IN COMPLIANCE WITH THE SCHEDULE IN M-91-42(4) AND M-91-44(3).

NOTE: THE REQUIREMENTS OF ITEM 6 OF THIS MILESTONE DO NOT APPLY PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN *WASHINGTON V.*

	<p>ABRAHAM, NO. CT-03-5018-AAM, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT.</p> <p>7. EACH REQUIREMENT OF THIS MILESTONE IS CONSIDERED A DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THE AGREEMENT</p>	
M-91-41	<p>REGARDING THE RETRIEVAL AND DESIGNATION OF REMOTE HANDLED (RH) RSW (ALL RSW RH WASTE REGARDLESS OF PACKAGE SIZE, INCLUDING THE 200 AREA CAISSONS), AND LDR TREATMENT OF SUCH WASTES DETERMINED TO BE MIXED.</p> <ol style="list-style-type: none"> DOE SHALL INITIATE FULL SCALE RETRIEVAL OF RH RSW BY JANUARY 1, 2011. RETRIEVAL OF NON-CAISSON RH RSW SHALL BE COMPLETED BY DECEMBER 31, 2014. RETRIEVAL THE 200 AREA CAISSON RH RSW IN THE 218-W-4B BURIAL GROUND SHALL BE COMPLETED BY DECEMBER 31, 2018. DOE SHALL DESIGNATE ALL RETRIEVED RH RSW PURSUANT TO WAC 173-303-070 THROUGH 100, WITHIN 90 DAYS OF RETRIEVAL. FOR ALL RETRIEVED RH-RSW DETERMINED TO BE LOW-LEVEL WASTE AND DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100, AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE SHALL TREAT SUCH WASTE TO MEET LDR REQUIREMENTS IN ACCORDANCE WITH THE SCHEDULE PROVIDED IN MILESTONE M-91-43(3). FOR ALL RETRIEVED RH-RSW DETERMINED TO BE TRANSURANIC WASTE AND DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100, AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE SHALL TREAT SUCH WASTES TO MEET LDR REQUIREMENTS IN ACCORDANCE WITH THE SCHEDULE PROVIDED IN MILESTONE M-91-44(3). <p>NOTE: THE REQUIREMENTS OF ITEM 4 OF THIS MILESTONE DO NOT APPLY PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR</p>	<p>DUE DATES AS INDICATED IN THE DESCRIPTIVE TEXT OF THIS MILESTONE</p>

	<p>STORAGE AND TREATMENT CLAIM IN <i>WASHINGTON V. ABRAHAM</i>, NO. CT-03-5018-AAM, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT.</p> <p>5. EACH REQUIREMENT OF THIS MILESTONE IS CONSIDERED A DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THE AGREEMENT</p>	
M-91-42	<p>REGARDING: (1) NEWLY GENERATED CH WASTE; AND (2) CH WASTE CURRENTLY IN ABOVE-GROUND STORAGE (NOT INCLUDING CH WASTE CURRENTLY IN ABOVE-GROUND STORAGE IN BOXES AND LARGE CONTAINERS).</p> <p>1. DOE SHALL DESIGNATE ALL NEWLY GENERATED CH WASTE AT THE POINT OF GENERATION. SUCH DESIGNATION SHALL COMPLY WITH THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100.</p> <p>2. THERE ARE 5,066 CUBIC METERS OF CH-MLLW IN PERMITTED STORAGE AT DOE'S CENTRAL WASTE COMPLEX (CWC) AND ELSEWHERE AT HANFORD AS OF 12/31/02 (AS IDENTIFIED IN DOE HFFACO MILESTONE M-26-01 LDR REPORT MLLW TREATABILITY GROUPS MLLW-02 THROUGH MLLW-10, EXCLUDING MLLW-07) THAT HAS NOT BEEN TREATED TO MEET LDR REQUIREMENTS. (THIS VOLUME DOES NOT INCLUDE 600 CUBIC METERS OF WASTE REQUIRING THERMAL TREATMENT, AS THAT WASTE IS REQUIRED TO BE TREATED BY 2006 UNDER HFFACO MILESTONES M-91-12 AND M-91-12A). DOE'S 2002 LDR REPORT ESTIMATES THAT IT WILL GENERATE AN ADDITIONAL ANNUAL VOLUME OF APPROXIMATELY 330 CUBIC METERS OF CH-MLLW (AS WASTE TYPES IDENTIFIED IN DOE HFFACO MILESTONE M-26-01 LDR REPORT MLLW TREATABILITY GROUPS MLLW-02 THROUGH MLLW-10, EXCLUDING MLLW-07). DOE WILL RETRIEVE APPROXIMATELY 800 CUBIC METERS OF CH-MLLW BY 2010. IN ADDITION TO MEETING THE REQUIREMENTS OF M-91-12 AND M-91-12A, DOE SHALL TREAT THE WASTE DESCRIBED ABOVE TO MEET LDR REQUIREMENTS ON A SCHEDULE MEETING, AT MINIMUM, THE FOLLOWING:</p> <p>A. 1630 CUBIC METERS (CUMULATIVE) SHALL BE</p>	<p>DUE DATES AS INDICATED IN THE DESCRIPTIVE TEXT OF THIS MILESTONE</p>

- TREATED BY 12/31/04,
- B. 3260 CUBIC METERS BY (CUMULATIVE) SHALL BE TREATED BY 12/31/05,
 - C. 4890 CUBIC METERS (CUMULATIVE) SHALL BE TREATED BY 12/31/06,
 - D. 6520 CUBIC METERS (CUMULATIVE) SHALL BE TREATED BY 12/31/07,
 - E. 8150 CUBIC METERS (CUMULATIVE) SHALL BE TREATED BY 12/31/08, AND
 - F. COMPLETE TREATMENT OF ALL CH-MLLW (5066 CUBIC METERS IN STORAGE AS OF 12/31/02 AS DESCRIBED ABOVE, AND RETRIEVED CH-MLLW AND NEWLY GENERATED CH-MLLW IN THE TREATABILITY GROUPS DESCRIBED ABOVE, AS OF 6/30/09) BY 12/31/09

IF CH-MLLW IN THE TREATABILITY GROUPS SUBJECT TO THIS MILESTONE GENERATED DURING THE PERIOD FROM 12/31/02 THROUGH 6/30/09 IS TREATED TO LDR STANDARDS PRIOR TO DELIVERY TO STORAGE OR DISPOSAL, THE ORIGINAL PRE-TREATMENT VOLUME OF THAT WASTE SHALL BE COUNTED TOWARD MEETING THE VOLUME REQUIREMENTS OF THIS MILESTONE. EXCEPT FOR WASTE ALREADY IN PERMITTED STORAGE, TREATMENT OF CERCLA WASTE WILL NOT BE COUNTED TOWARD MEETING THE VOLUME REQUIREMENTS OF THIS MILESTONE. IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-MLLW COVERED BY THIS MILESTONE IS LOWER THAN THE ESTIMATED VOLUMES ANTICIPATED BY THESE MILESTONES DOE WILL ONLY BE REQUIRED TO TREAT THE VOLUME OF WASTE GENERATED, RETRIEVED AND/OR IN STORAGE. IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-MLLW COVERED BY THIS MILESTONE IS SIGNIFICANTLY MORE THAN THE ESTIMATED VOLUMES THE PARTIES' MAY AGREE TO REVISE THESE REQUIREMENTS.

- 3. AFTER JUNE 30, 2009, DOE SHALL TREAT TO MEET LDR TREATMENT REQUIREMENTS ALL NEWLY GENERATED CH-MLLW CONTAINING LDR CONSTITUENTS IN COMPLIANCE WITH WAC 173-303-140 AND BY REFERENCE 40 CFR 268.
- 4. THERE ARE APPROXIMATELY 440 CUBIC METERS OF CH-TRUM IN PERMITTED STORAGE AT DOE'S CENTRAL

WASTE COMPLEX (CWC) AND ELSEWHERE AT HANFORD AS OF 12/31/02. DOE'S 2002 LDR REPORT ESTIMATES THAT IT WILL GENERATE AN ADDITIONAL ANNUAL VOLUME OF APPROXIMATELY 220 CUBIC METERS OF CH-TRUM AND DOE ESTIMATES THEY WILL RETRIEVE APPROXIMATELY 1600 CUBIC METERS OF CH-TRUM BY 2010. CONSIDERING THESE ESTIMATES AND THE CONSIDERABLE UNCERTAINTY ASSOCIATED WITH THEM DOE SHALL TREAT THE WASTE CATEGORIES DESCRIBED ABOVE TO MEET LDR REQUIREMENTS ON THE FOLLOWING SCHEDULE:

- 700 CUBIC METERS BY 12/31/04;
- 1,800 CUBIC METERS (CUMULATIVE) BY 12/31/05;
- 3,000 CUBIC METERS (CUMULATIVE) BY 12/31/06,
- 4,200 CUBIC METERS (CUMULATIVE BY 12/31/07
- 5,400 CUBIC METERS (CUMULATIVE BY 12/31/08
- 6,600 CUBIC METERS (CUMULATIVE BY 12/31/09
- 7,600 CUBIC METERS (CUMULATIVE) BY 12/31/10;
- 8,600 CUBIC METERS (CUMULATIVE) BY 12/31/11.

IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-TRUM COVERED BY THIS MILESTONE IS LOWER THAN THE ESTIMATED VOLUMES ANTICIPATED BY THESE MILESTONES DOE WILL ONLY BE REQUIRED TO TREAT THE VOLUME OF WASTE GENERATED, RETRIEVED AND/OR IN STORAGE. IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-TRUM COVERED BY THIS MILESTONE IS SIGNIFICANTLY MORE THAN THE ESTIMATED VOLUMES THE PARTIES' MAY AGREE TO REVISE THESE REQUIREMENTS.

5. FOR CH TRANSURANIC WASTE NEWLY GENERATED ON OR AFTER 7/1/11 THAT IS DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100 AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE SHALL TREAT SUCH WASTES TO MEET LDR REQUIREMENTS PURSUANT TO WAC 173-303-140 WITHIN ONE YEAR OF GENERATION.

DOE MAY CHOOSE TO COMPLETE CERTIFICATION OF CH TRANSURANIC WASTE FOR DISPOSAL AT WIPP IN LIEU OF LDR TREATMENT, PROVIDED THAT ECOLOGY IS NOTIFIED IN WRITING OF SUCH COMPLETION OF CERTIFICATION, AND ONLY IF, AS OF THE TIME OF CERTIFICATION OR BY

	<p>VIRTUE OF CERTIFICATION, SUCH WASTE IS EXEMPT FROM LDR TREATMENT REQUIREMENTS. IF DOE CHOOSES TO CERTIFY IN LIEU OF TREATMENT, IT MAY MEET THE VOLUME REQUIREMENTS SPECIFIED IN THIS MILESTONE FOR ANY GIVEN YEAR BY CERTIFYING CH TRU OR CH TRUM, PROVIDED THAT 1) ALL CH TRUM IN PERMITTED STORAGE AS OF 12/31/02 IS TREATED TO MEET LDR REQUIREMENTS OR CERTIFIED BY 12/31/2006 AND 2) ALL CH TRUM IN PERMITTED STORAGE AS OF 7/1/11 IS TREATED TO MEET LDR REQUIREMENTS OR IS CERTIFIED BY 12/31/2011.</p> <p>NOTE: THE REQUIREMENTS OF ITEMS 4 AND 5 OF THIS MILESTONE DO NOT APPLY PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN <i>WASHINGTON V. ABRAHAM</i>, NO. CT-03-5018-AAM, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT. IN THE EVENT THAT ITEMS 4 OR 5 BECOME APPLICABLE, AMOUNTS OF CH TRUM CERTIFIED BETWEEN THE EFFECTIVE DATE OF THIS CHANGE PACKAGE AND THE DATE ON WHICH ITEMS 4 OR 5 BECOME APPLICABLE SHALL COUNT TOWARDS SATISFACTION OF THE OBLIGATIONS IN ITEMS 4 AND 5.</p> <p>6. EACH REQUIREMENT OF THIS MILESTONE IS CONSIDERED A DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THE AGREEMENT</p>	
M-91-43	<p>REGARDING: (1) NEWLY GENERATED RH LOW-LEVEL WASTE; (2) NEWLY GENERATED BOXES AND LARGE CONTAINERS OF CH LOW-LEVEL WASTE; (3) RH LOW-LEVEL WASTE CURRENTLY IN ABOVE-GROUND STORAGE; AND (4) BOXES AND LARGE CONTAINERS OF CH LOW-LEVEL WASTE CURRENTLY IN ABOVE-GROUND STORAGE.</p> <p>THERE ARE 81 CUBIC METERS OF RH-MLLW IN PERMITTED STORAGE AT DOE'S CENTRAL WASTE STORAGE COMPLEX (CWC) AND ELSEWHERE AT HANFORD AS OF 12/31/02 (AS IDENTIFIED IN DOE HFFACO MILESTONE M-26-01 LDR REPORT MLLW TREATABILITY GROUPS MLLW-07) THAT HAS NOT BEEN TREATED TO MEET LDR REQUIREMENTS. DOE'S 2002 LDR REPORT CURRENTLY ESTIMATES THAT DOE WILL GENERATE AN ADDITIONAL YEARLY VOLUME OF 280 CUBIC METERS OF WASTE IN THIS TREATABILITY</p>	<p>DUE DATES AS INDICATED IN THE DESCRIPTIVE TEXT OF THIS MILESTONE</p>

GROUP. IN ADDITION, DOE WILL RETRIEVE APPROXIMATELY 800 CUBIC METERS BY 2010. THIS INCLUDES VOLUMES OF RETRIEVED RSW

1. DOE SHALL DESIGNATE ALL RH LOW-LEVEL WASTE AND BOXES AND LARGE CONTAINERS OF CH LOW-LEVEL WASTE CURRENTLY IN ABOVE-GROUND PERMITTED STORAGE (AS OF JUNE 30, 2003) ACCORDING TO THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100, BY DECEMBER 31, 2008
2. DOE SHALL DESIGNATE ALL NEWLY GENERATED RH LOW-LEVEL WASTE AND TRANSURANIC WASTE AND NEWLY GENERATED BOXES AND LARGE CONTAINERS OF CH-LOW-LEVEL WASTE AT THE POINT OF GENERATION. SUCH DESIGNATION SHALL COMPLY WITH THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100.
3. DOE SHALL BEGIN TREATING RH MLLW AND BOXES AND LARGE CONTAINERS OF CH MLLW TO MEET LDR TREATMENT REQUIREMENTS AT A MINIMUM RATE OF 300 CUBIC METERS PER YEAR BEGINNING NO LATER THAN JUNE 30, OF 2008. IF THERE ARE NOT 300 CUBIC METERS OF RH MLLW AND BOXES AND LARGE CONTAINERS OF CH MLLW IN STORAGE IN ANY GIVEN YEAR, THIS MILESTONE REQUIRES THAT DOE TREAT ONLY THAT AMOUNT THAT IS IN STORAGE. IF RH-MLLW IN THE TREATABILITY GROUPS SUBJECT TO THIS MILESTONE GENERATED DURING THE PERIOD FROM 12/31/02 THROUGH 6/30/09 IS TREATED TO LDR STANDARDS PRIOR TO DELIVERY TO STORAGE OR DISPOSAL, THE ORIGINAL PRE-TREATMENT VOLUME OF THAT WASTE SHALL BE COUNTED TOWARD MEETING THE VOLUME REQUIREMENTS OF THIS MILESTONE. EXCEPT FOR WASTE ALREADY IN PERMITTED STORAGE, TREATMENT OF CERCLA WASTE WILL NOT BE COUNTED TOWARD MEETING THE VOLUME REQUIREMENTS OF THIS MILESTONE. IF ACTUAL VOLUMES OF NEWLY GENERATED OR RETRIEVED RH AND BOXES AND LARGE CONTAINER MLLW ARE SIGNIFICANTLY MORE THAN THE ESTIMATED VOLUMES, THIS MILESTONE WILL BE REVISED TO REFLECT ACTUAL VOLUMES.
4. EACH ELEMENT OF THIS MILESTONE IS CONSIDERED A

	DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THE AGREEMENT.	
M-91-44	<p>REGARDING: (1) NEWLY GENERATED RH TRANSURANIC WASTE; (2) NEWLY GENERATED BOXES AND LARGE CONTAINERS OF CH-TRANSURANIC WASTE; (3) RH TRANSURANIC WASTE CURRENTLY IN ABOVE GROUND STORAGE; AND (4) BOXES AND LARGE CONTAINERS OF CH TRANSURANIC WASTE CURRENTLY IN ABOVE-GROUND STORAGE.</p> <ol style="list-style-type: none"> DOE SHALL DESIGNATE ALL RH TRANSURANIC WASTE AND BOXES AND LARGE CONTAINERS OF CH TRANSURANIC WASTE CURRENTLY IN ABOVE- GROUND STORAGE (AS OF JUNE 30, 2003) ACCORDING TO THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100, BY DECEMBER 31, 2012 DOE SHALL DESIGNATE ALL NEWLY GENERATED RH TRANSURANIC WASTE AND BOXES AND LARGE CONTAINERS OF TRANSURANIC WASTE AT THE POINT OF GENERATION. SUCH DESIGNATION SHALL COMPLY WITH THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100. DOE SHALL BEGIN TREATING RH TRUM AND BOXES AND LARGE CONTAINERS OF CH TRUM TO MEET LDR TREATMENT REQUIREMENTS AT A MINIMUM RATE OF 300 CUBIC METERS PER YEAR BEGINNING NO LATER THAN JUNE 30, 2012. IF THERE ARE NOT 300 CUBIC METERS OF RH TRUM AND BOXES AND LARGE CONTAINERS OF CH TRUM IN STORAGE IN ANY GIVEN YEAR, THIS MILESTONE REQUIRES THAT DOE TREAT ONLY THAT AMOUNT THAT IS IN STORAGE. IF ACTUAL VOLUMES OF NEWLY GENERATED OR RETRIEVED RH TRUM AND BOXES AND LARGE CONTAINER TRUM ARE SIGNIFICANTLY MORE THAN THE ESTIMATED VOLUMES, THIS MILESTONE WILL BE REVISED TO REFLECT ACTUAL VOLUMES. AS TO NEWLY GENERATED RH TRUM GENERATED AFTER 12/31/18 THAT IS DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH -100 AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE 	<p>DUE DATES AS INDICATED IN THE DESCRIPTIV E TEXT OF THIS MILESTONE</p>

	<p>SHALL TREAT TO MEET LDR REQUIREMENTS WITHIN ONE YEAR OF GENERATION.</p> <p>DOE MAY CHOOSE TO COMPLETE CERTIFICATION OF SUCH WASTES FOR DISPOSAL AT WIPP IN LIEU OF LDR TREATMENT, PROVIDED THAT ECOLOGY IS NOTIFIED IN WRITING OF SUCH COMPLETION OF CERTIFICATION AND ONLY IF, AS OF THE TIME OF CERTIFICATION OR BY VIRTUE OF CERTIFICATION, SUCH WASTE IS EXEMPT FROM LDR TREATMENT REQUIREMENTS.</p> <p>NOTE: THE REQUIREMENTS OF ITEMS 3 AND 4 OF THIS MILESTONE DO NOT APPLY PRIOR TO A FINAL APPEALABLE JUDGMENT ON THE MERITS OF THE LDR STORAGE AND TREATMENT CLAIM IN <i>WASHINGTON V. ABRAHAM</i>, NO. CT-03-5018-AAM, AND AFTER SUCH A JUDGMENT, ONLY AS SET FORTH IN THE ACCOMPANYING SETTLEMENT AGREEMENT.</p> <p>5. EACH REQUIREMENT OF THIS MILESTONE IS CONSIDERED A DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THE AGREEMENT.</p>	
M-91-45	<p>BY SEPTEMBER 30 OF EACH YEAR, DOE SHALL SUBMIT TO ECOLOGY A REPORT DESCRIBING COMPLETED AND SCHEDULED WORK RELATING TO RH WASTE AND BOXES AND LARGE CONTAINERS OF RH AND CH WASTE PERFORMED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS MILESTONE SERIES. DOE'S REPORTS WILL DOCUMENT WORK COMPLETED DURING THE PREVIOUS FEDERAL FISCAL YEAR AND WORK SCHEDULED FOR THE COMING FISCAL YEAR. DOE'S REPORTS SHALL IDENTIFY BY CITATION ALL PUBLICLY AVAILABLE REPORTS DESCRIBING PERTINENT PROJECT ISSUES AND ACCOMPLISHMENTS, AND SHALL IDENTIFY ANTICIPATED PROJECTS FOR THE COMING YEAR.</p>	<p>9/30/2004 AND ANNUALLY THEREAFTE R</p>

Exhibit B

Change Number	Federal Facility Agreement and Consent Order		Date:	
M-16-03-03	Change Control Form Do not use blue ink. Type or print using black ink.		October 20, 2003	
Originator: Laura Cusack Ecology		Phone: (509) 736-3038		
Class of Change:				
<input type="checkbox"/> I - Signatories		<input checked="" type="checkbox"/> II - Executive Manager		<input type="checkbox"/> III - Project Manager
Change Title:				
M-016 Submission and Implementation of a work plan for acquisition of TRU and TRU mixed-waste management capabilities to support CERCLA actions at the Hanford site				
Description/Justification of Change:				
This change package provides for an implementation work plan to describe how plans developed to provide capabilities for managing TRUM and suspect TRUM will be integrated with CERCLA planning for TRU/TRUM wastes. This will help ensure that there will be comprehensive planning for capabilities needed for both CERCLA and non-CERCLA TRU/TRUM streams.				
Impact of Change:				
Provides a comprehensive work plan to describe acquisition of TRU/TRUM management capabilities to support CERCLA actions at the Hanford site. The change also deletes or modifies references to M-091 and WIPP RH-TRU waste acceptance criteria in M-016-66 and M-016-67.				
Affected Documents:				
The Hanford Federal Facility Agreement and Consent Order, as amended, and Hanford Site internal planning management, and budget documents (e.g., USDOE and USDOE contractor Baseline Change Control documents; Multi-Year Work Plan; Sitewide Systems Engineering Control Documents; Project Management Plans, and, if appropriate, LDR Report requirements).				
Approvals:				
_____	_____	__ Approved	__ Disapproved	
W. W. Ballard, RL IAMIT Representative	Date			
_____	_____	__ Approved	__ Disapproved	
N. Ceto, EPA IAMIT Representative	Date			
_____	_____	__ Approved	__ Disapproved	
M. A. Wilson, Ecology IAMIT Representative	Date			

Modifications established by approval of this Tri-Party Agreement Change Request are denoted as ~~redline~~ ~~strikeout~~ for deletions, ~~modification~~ and ~~shading~~ for new text.

Milestone	Description	Date
M-016-66	<p>INITIATE INTERMEDIATE DESIGN AND AUTHORIZATION SAFETY ANALYSIS FOR REMEDIAL ACTIONS AT THE 618-10 AND 618-11 BURIAL GROUNDS</p> <p>THE INTERMEDIATE DESIGN SHALL INCLUDE, ATA MINIMUM, A DESIGN BASIS REPORT, REMEDIATION APPROACH (I.E., PROCESS DEFINITION) SITE LAY-OUT, EVALUATION OF INFRASTRUCTURE REQUIREMENTS, AND PLANNING FOR TREATABILITY TESTS. INTERMEDIATE DESIGN ACTIVITIES WILL UTILIZE ANTICIPATED WIPP REMOTE HANDLED TRANSURANIC (RH-TRU/TRUM) WASTE ACCEPTANCE CRITERIA, AN EVALUATION OF RH TRU/TRUM TECHNOLOGY DEVELOPMENT EFFORTS AND AN EVALUATION OF LESSONS LEARNED FROM OTHER ONGOING DOE COMPLEX TRU EXCAVATION EFFORTS. THE AUTHORIZATION SAFETY ANALYSIS SHALL INCLUDE, AT A MINIMUM, ANY APPROVALS REQUIRED TO SUPPORT ADDITIONAL SITE CHARACTERIZATION WITHIN 618-10 AND 618-11 BURIAL GROUNDS FOR DESIGN PURPOSES AND ANY TREATABILITY INVESTIGATIONS.</p>	09/30/2004
M-016-67	<p>SUBMIT AN INTERMEDIATE DESIGN REPORT, A REMEDIATION SCHEDULE AND A TREATABILITY INVESTIGATION WORK PLAN FOR REMEDIAL ACTIONS AT THE 618-10 AND 618-11 BURIAL GROUNDS.</p> <p>THE INTERMEDIATE DESIGN REPORT SHOULD REPRESENT A 60% COMPLETE DESIGN REPORT. THE REMEDIATION SCHEDULE MUST IDENTIFY: 1) DATES FOR INITIATING AND COMPLETING INTERIM REMEDIAL ACTIONS AT WASTE SITES, AND 2) ANY DOCUMENTS REQUIRING EPA AND/OR ECOLOGY APPROVAL PRIOR TO INITIATING REMEDIAL ACTIONS (E.G., RD/RA WORKPLANS, ETC.). THE TREATABILITY INVESTIGATION WORK PLAN MUST BE CONSISTENT WITH WIPP'S ACTUAL (OR, IF NOT YET APPROVED, ANTICIPATED) RH TRU/TRUM WASTE ACCEPTANCE CRITERIA AND WILL BE SUBMITTED AS A TRI-PARTY AGREEMENT PRIMARY DOCUMENT</p>	03/31/2007
M-016-93 (LEAD AGENCY: EPA)	<p>SUBMIT AN IMPLEMENTATION WORKPLAN TO EPA FOR THE ACQUISITION OF CAPABILITIES NECESSARY TO PREPARE TRU AND TRUM WASTE GENERATED BY CERCLA CLEAN UP ACTIONS AT THE HANFORD SITE FOR DISPOSAL AT THE WASTE ISOLATION PILOT PLANT (WIPP). THIS WORKPLAN WILL REFLECT RETRIEVAL DECISIONS, PROJECTED WASTE VOLUMES, AND SCHEDULES FROM ALL CERCLA CLEANUP ACTIONS AUTHORIZED IN RECORDS OF DECISION AND ACTION MEMORANDA AT THE HANFORD SITE, AND WILL PROVIDE FOR UPDATES AND</p>	09/30/2006

REVISIONS AS NEW INFORMATION BECOMES AVAILABLE (AT A MINIMUM, THE WORKPLAN MUST BE REVISED IN 2009 (AFTER ALL 200 AREA RODS ARE ISSUED) AND IN 2012). AS PART OF THE APPROVAL PROCESS, EPA WILL CONSULT WITH ECOLOGY TO ENSURE THAT WASTES FROM CERCLA OPERABLE UNITS FOR WHICH ECOLOGY IS THE LEAD REGULATORY AGENCY ARE PROPERLY PLANNED FOR. THIS WORKPLAN WILL PROVIDE A SCHEDULE FOR ACQUIRING THE CAPABILITIES FOR TRU AND TRUM MANAGEMENT NECESSARY TO SUPPORT ALL CERCLA CLEANUP ACTIONS. IN ORDER TO AVOID Duplicative REQUIREMENTS, THE M-16-93 WORKPLAN WILL INTEGRATE PLANS DEVELOPED PURSUANT TO THE M-91 MILESTONES TO PROVIDE CAPABILITIES FOR RCRA MIXED AND SUSPECT MIXED TRANSURANIC WASTE WHERE SUCH CAPABILITIES ALSO CAN BE USED FOR CERCLA TRU/TRUM WASTE. THE WORKPLAN WILL BE SUBMITTED PURSUANT TO SECTION 11.6 OF THE TRI-PARTY AGREEMENT.

Exhibit C


Tentative Agreement on Hanford Federal Facility Agreement and Consent
Order (HFFACO)
Negotiations for the Management of Hanford RCRA and CERCLA Wastes
(HFFACO Milestone Series M-091 and M-016)

The U.S. Department of Energy, Richland Operations Office (RL), the State of Washington, Department of Ecology, and the U.S. Environmental Protection Agency (EPA), hereinafter referred to as the Parties, have concluded negotiations for the management of Hanford RCRA and CERCLA wastes under HFFACO Milestone Series M-091 and M-016. The enclosed HFFACO Change Requests Nos. M-91-03-01 and M-16-03-03, in conjunction with the October 2003 Settlement Agreement, were developed by, and found mutually agreeable to, the Parties.

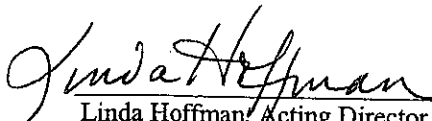
Final approval by the Parties is subject to public comment and appropriate change request modifications, if necessary. A 45-day public comment period is scheduled to run from approximately November 15 to December 30. Following conclusion of the public comment period, a response to comments document will be prepared and issued, the change request will be modified if appropriate and will be approved by the signatories. On approval, the requirements of Change Request Nos. M-91-03-01 and M-16-03-03 will be incorporated into the HFFACO.

In the event that the Parties are unable to agree on changes, if any, to Change Request Nos. M-91-03-01 and M-16-03-03 as a result of comments received during the public comment period, then no Party shall be obligated to sign or approve Change Request M-91-03-01 or Change Request M-16-03-03, and this Tentative Agreement shall be null and void.

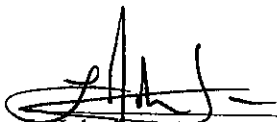
Signed this 23rd day of October 2003.



Keith A. Klein, Manager
U.S. Department of Energy, Richland
Operations Office



Linda Hoffman, Acting Director
State of Washington, Department of
Ecology



L. John Iani, Administrator
Region 10
U.S. Environmental Protection Agency

Exhibit D

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4
5

6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF WASHINGTON**

8 STATE OF WASHINGTON,

9 Plaintiff,

NO. CT-03-5018-AAM

10 v.

11 SPENCER ABRAHAM, Secretary of
Energy, and the UNITED STATES
DEPARTMENT OF ENERGY,

12 Defendants.
13

**STATE OF WASHINGTON'S
FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

14 COLUMBIA RIVERKEEPER, et al.,

15 Plaintiff,

NO. CT-03-5044-AAM

16 v.

17 SPENCER ABRAHAM, Secretary of
Energy; et al.,

18 Defendants.
19

20 **I. INTRODUCTION**

21 1. This is an action for declaratory and injunctive relief arising from the
22 United States Department of Energy's (DOE) decision to ship radioactive and

1 radioactive/hazardous mixed transuranic waste across the nation to the Hanford
2 Nuclear Reservation in Eastern Washington for treatment and/or indefinite storage
3 pending potential ultimate disposal in New Mexico. DOE made its decision to ship
4 these wastes to Hanford for treatment and/or storage without complying with the
5 requirements of the National Environmental Policy Act (NEPA). DOE's decision is
6 arbitrary and capricious, not in accordance with the law, and without observance of
7 procedures required by law, in that it violated NEPA and applicable implementing
8 regulations and relies on outdated and incorrect information concerning the volume
9 and sources of wastes needing disposition, and concerning the potential impacts from
10 transportation of these wastes to Hanford, and storage and/or treatment of these
11 wastes at the Hanford Site.

12 DOE is already storing more than 75,000 drums or drum equivalents of
13 suspected transuranic waste at Hanford in violation of the Washington Hazardous
14 Waste Management Act (HWMA), Wash. Rev. Code 70.105. Storage at Hanford of
15 the additional wastes at issue in this lawsuit will likewise violate the HWMA.

16 2. The State of Washington requests a judgment declaring that DOE's
17 decision to treat and/or store transuranic wastes and mixed transuranic wastes at
18 Hanford violates NEPA and applicable implementing regulations, is arbitrary and
19 capricious, is not in accordance with the law, and is without observance of procedures
20 required by law; and declaring that DOE's continued storage of certain untreated
21 mixed waste at the Hanford Site, and storage at Hanford of additional off-site mixed
22 transuranic waste, violates the HWMA and applicable regulations. Further, the State

1 seeks preliminary and permanent injunctive relief requiring DOE to rescind its
2 decision to ship transuranic and mixed transuranic wastes to Hanford, and prohibiting
3 DOE from shipping any additional such wastes to Hanford until DOE 1) has fully
4 complied with NEPA, 2) has undertaken a decision making process based on current
5 facts and circumstances, in full compliance with the Administrative Procedure Act
6 (APA), and 3) has complied with the HWMA prohibition on continued storage of
7 certain untreated mixed waste.

8 **II. JURISDICTION AND VENUE**

9 3. This action arises under the National Environmental Policy Act (NEPA)
10 of 1969, as amended, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations,
11 adopted by the Council on Environmental Quality (CEQ) and applicable to all
12 agencies (CEQ NEPA Regulations), 40 C.F.R. Parts 1500-1508, and the DOE's
13 implementing procedures, 10 C.F.R. Part 1021. Plaintiff seeks Judicial Review
14 pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706,
15 authorizing judicial review of all agency actions. This Court also has jurisdiction over
16 this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
17 Finally, jurisdiction over Plaintiff's claim to enforce the HWMA arises pursuant to
18 Wash. Rev. Code § 70.105.120. The Court has Supplemental Jurisdiction over the
19 HWMA claim pursuant to 28 U.S.C. § 1367.

20 4. The United States has waived sovereign immunity with respect to the
21 claims asserted herein under 5 U.S.C. § 702 (APA) and 42 U.S.C. § 6961 (Resource
22 Conservation and Recovery Act).

1 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

2 **III. PARTIES**

3 6. Plaintiff is the State of Washington. The State owns the groundwaters
4 and surface waters of the State, including the groundwater beneath the Hanford Site,
5 the Columbia River, and all ground and surface waters within the State over or
6 through which DOE must transport the radioactive and hazardous transuranic wastes
7 at issue. The State also owns numerous roads and highways over which DOE will
8 transport its waste to Hanford. State Road 240 runs through the Hanford Site. Other
9 state roads and highways in the vicinity include State Roads 14, 24, and 224, and State
10 Highways 12 and 395. The State's waters, highways, and roads are threatened by the
11 transport of radioactive and hazardous transuranic wastes to Hanford, and by
12 Defendants' treatment and/or indefinite storage of those wastes at Hanford, in
13 violation of NEPA, the APA, and the HWMA.

14 7. Additionally, the State has a direct and tangible interest in the health,
15 safety, and welfare of its citizens, and of the lands, air, and waters of the State, which
16 are threatened by Defendants' actions. Finally, the State, through its Department of
17 Ecology, is responsible for implementing the HWMA, Wash. Rev. Code § 70.105 *et*
18 *seq.*, at facilities that treat, store, or dispose of hazardous or dangerous wastes,
19 including the Hanford Site.

20 8. Defendants' plan to transport radioactive and hazardous transuranic
21 wastes to Hanford, and to treat and/or indefinitely store such wastes there without
22 complying with the HWMA, poses significant risks to human health and the

1 environment. These risks include risks from potential pollution to groundwaters and
2 surface waters of the State, such as the Columbia River, and to adjoining state-owned
3 lands, which are used by the State and its people for commerce, fishing, recreation,
4 habitat, aesthetics, tourism, and maintaining the cultural identity of the State.
5 Additionally, the treatment and/or indefinite storage of off-site radioactive and
6 hazardous transuranic waste at Hanford will only complicate Defendants' already
7 troubled effort to cleanup existing radioactive and hazardous wastes, including
8 transuranic wastes currently located at Hanford, and will frustrate the State's
9 regulatory efforts to require DOE to bring its activities and facilities at the Hanford
10 Site into compliance with applicable law.

11 9. Defendant Spencer Abraham is the Secretary of the United States
12 Department of Energy, and is the chief administrative officer of DOE. Secretary
13 Abraham is the official ultimately responsible for the waste management decisions of
14 DOE, including DOE decision making with respect to storage, treatment, and disposal
15 of DOE's transuranic and mixed transuranic wastes.

16 10. Defendant United States Department of Energy (DOE) is an executive
17 department of the United States, created pursuant to 42 U.S.C. § 7131. DOE owns
18 and operates the Hanford Site near Richland, Washington. Hanford is one of the most
19 contaminated places on the planet. DOE has decided, pursuant to a flawed NEPA
20 process, to utilize the Hanford site for an indefinite period of time for treatment and/or
21 storage of radioactive and hazardous transuranic wastes currently located at other
22 DOE sites.

IV. FACTS

11. As a consequence of over fifty years of nuclear weapons research, production, and reprocessing, DOE and its predecessors generated large quantities of radioactive and mixed (hazardous and radioactive) waste at sites across DOE's national nuclear weapons complex.

12. DOE is responsible for the treatment, storage, and disposal of vast inventories of radioactive and mixed waste that have resulted from its past nuclear energy and weapons research, production, and reprocessing, and from decontamination and decommissioning of former nuclear weapons research, production, and reprocessing sites.

13. At its peak, the federal nuclear weapons complex consisted of sixteen major facilities, including large sites in Idaho, Washington, and South Carolina. The most contaminated of these sites is the Hanford Site in Washington State.

14. Between 1943 and 1987, the United States produced plutonium at the Hanford Site for use in nuclear weapons. Plutonium production and other activities at Hanford created enormous amounts of radioactive, hazardous, and mixed wastes, some of which were disposed of directly into the ground, and some of which were stored in various forms at Hanford.

15. Today, Hanford contains over 1,500 identified contaminated sites and structures, which individually and collectively pose substantial risks to human health and the environment. For example, there are 54 million gallons of high-level radioactive waste stored in 28 double-shell tanks and 149 single-shell tanks, at least

1 67 of which have already leaked one million or more gallons of waste to the
2 surrounding soil and to groundwater that flows toward the Columbia River;
3 approximately 1,500 metric tons of spent fuel and sludge stored underwater in
4 deteriorating K-Basins located a mere 400 yards from the Columbia River, and
5 30 metric tons of non-defense spent nuclear fuel stored underwater in other storage
6 basins; approximately 3,700 kilograms of plutonium stored in aging facilities;
7 approximately 640,000 cubic meters of low-level radioactive waste already disposed
8 or planned by DOE for disposal at Hanford in shallow, unlined trenches;
9 approximately 920,000 cubic meters of mixed low-level radioactive waste already
10 disposed at Hanford (or planned by DOE for disposal at Hanford) in land disposal
11 trenches; and long-term release hazards through Hanford's vadose zone and
12 groundwater. One cubic meter is roughly equivalent to the volume contained by five
13 55-gallon drums.

14 16. Among the wastes generated during plutonium production at Hanford
15 were large quantities of transuranic wastes. Transuranic wastes are wastes that have
16 been contaminated with radioactive elements that have an atomic number higher than
17 that of uranium. By definition, transuranic wastes contain more than 100 nanocuries
18 of alpha-emitting transuranic isotopes per gram of waste, and have half-lives of
19 greater than 20 years. Transuranic wastes contain radioactive elements such as
20 plutonium. Some transuranic wastes also contain hazardous constituents (mixed
21 transuranic wastes), and are regulated under the Resource Conservation and Recovery
22 Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*

1 17. Transuranic waste is classified according to the radiation dose at a
2 package surface. "Contact-handled" transuranic waste has a radiation dose at package
3 surface of 200 millirems per hour or less. This packaged waste can be handled
4 directly by personnel. "Remote-handled" transuranic waste has a radiation dose at
5 package surface of greater than 200 millirems per hour, and must be handled with
6 special machinery designed to shield workers from radiation.

7 18. Between 1970 and 1985, DOE "retrievably stored" at Hanford
8 approximately 16,000 cubic meters (equivalent to 80,000 fifty-five gallon drums) of
9 known or suspect transuranic and transuranic mixed waste in drums and other
10 containers. This waste remains on the Hanford Site today. Almost none of this waste
11 has been "designated" (i.e., characterized as required by state and federal regulations),
12 and nearly all of it is partially buried in unlined trenches at the Hanford Low-Level
13 Burial Grounds.

14 19. Washington State attempted to work with DOE to establish an agreed
15 compliance schedule for the retrieval, designation, treatment, and ultimate transport of
16 this material for disposal at the Waste Isolation Pilot Plant (WIPP), a repository near
17 Carlsbad, New Mexico constructed specifically for the deep geologic disposal of
18 transuranic waste. As of March 4, 2003, when the State filed this lawsuit, DOE had
19 not made enforceable commitments for this work, and had made little progress in
20 dealing with the known and suspect transuranic and transuranic mixed waste already
21 at the Hanford Site.
22

1 20. Washington State regulates DOE's management of hazardous wastes and
2 radioactive/hazardous "mixed" wastes at Hanford pursuant to the HWMA. The State
3 is authorized by the United States Environmental Protection Agency (EPA) to operate
4 the State's hazardous waste program in lieu of Federal RCRA requirements.

5 21. DOE's "retrievably stored" waste has not been designated pursuant to
6 Wash. Admin. Code 173-303-070 (i.e., characterized) to determine what, if any,
7 hazardous constituents may be present in the waste and how those constituents will
8 affect the safe storage, management, and disposal of the waste, and any treatment
9 required (e.g., whether the wastes are corrosive, ignitable, reactive, and/or toxic).

10 22. The long-term buried storage of "retrievably stored" waste violates
11 Wash. Admin. Code 173-303-400(3)(a) and by incorporation 40 C.F.R. § 265.173(b),
12 which require that a container holding hazardous waste not be stored in a manner
13 which may rupture the container or cause it to fail.

14 23. Wash. Admin. Code 173-303-400(3)(a) and by incorporation 40 C.F.R.
15 § 265.171 require that if a container holding hazardous waste is not in good condition,
16 the owner or operator must transfer the contents to another container or manage the
17 container in some other way that complies with the regulations. Numerous containers
18 in retrievable storage have significantly deteriorated and are not managed in
19 accordance with the regulations.

20 24. The "retrievably stored" waste is stored in a manner that precludes
21 weekly inspection for leaks and for deterioration caused by corrosion or other factors,
22

1 as required by Wash. Admin. Code 173-303-400(3)(a) and by incorporation 40 C.F.R.
2 § 265.174.

3 25. Wash. Admin. Code 173-303-400 and by reference 173-030-630(3)
4 requires the owner/operator to ensure that the waste container's labels are not
5 obscured, removed, or otherwise unreadable during inspections.

6 26. The "retrievably stored" waste is stored in a manner that obscures the
7 waste container labels, renders them unreadable, and precludes determinations
8 concerning whether the labels have been removed.

9 27. DOE has not even determined which containers of the "retrievably
10 stored" waste are transuranic.

11 28. Facilities in the State that treat, store, and/or dispose of hazardous waste
12 must be permitted by the Washington State Department of Ecology (Ecology).
13 Facilities that were in existence at the time that they became subject to HWMA and
14 RCRA requirements may operate under limited "interim status standards" pending
15 Ecology's issuance of a final facility permit, if the facilities timely submit to Ecology
16 a "Part A permit application" and comply with the interim status standards set forth in
17 the regulations. Wash. Admin. Code § 173-303-805.

18 29. Ecology has issued to DOE a single final facility permit for the entire
19 Hanford Site, pursuant to Wash. Admin. Code § 173-303-806. However, due to the
20 number and complexity of treatment, storage, and disposal (TSD) units at Hanford,
21 final facility standards have not been established for all TSD units at the site. DOE is
22 subject to a compliance schedule for submitting final status permit ("Part B")

1 applications for numerous TSD units. Once approved by Ecology, those standards
2 will be incorporated, on a unit-by-unit basis, into the Hanford Site final status permit.

3 30. DOE has informally advised Ecology that DOE may treat and/or store
4 off-site transuranic and transuranic mixed waste at one or more of the following TSDs
5 at Hanford: the Low-Level Burial Grounds, T-Plant, the Central Waste Complex, and
6 the Waste Receiving and Processing Facility. Because final facility standards have
7 not been approved for any of these units, they are all operated subject to interim status
8 facility standards.

9 31. In 1989, Ecology, EPA, and DOE entered into the "Hanford Federal
10 Facility Agreement and Consent Order" (HFFACO). The HFFACO is both a federal
11 facility agreement pursuant to the Comprehensive Environmental Response,
12 Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, and a consent
13 order pursuant to the RCRA, 42 U.S.C. §§ 9601-6922k, and Washington's HWMA.
14 The HFFACO establishes numerous milestones (schedules and associated regulatory
15 requirements) for cleanup of the Hanford Site, and for bringing Hanford facilities into
16 compliance with applicable requirements.

17 32. DOE's Office of Environmental Management is responsible for a variety
18 of waste management and environmental restoration activities, including but not
19 limited to managing a large amount and variety of radioactive and hazardous wastes;
20 providing safe storage for wastes while building and operating a variety of treatment
21 facilities to prepare wastes for disposal; and cleaning up areas of existing
22 contamination and pollution.

1 33. In May 1997, DOE, through its Office of Environmental Management,
2 issued its Final Waste Management Programmatic Environmental Impact Statement
3 for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste
4 (PEIS). The purpose of the PEIS was to help DOE identify and select the optimal
5 national configuration for the management (treatment, storage, or disposal) of five
6 types of waste:

- 7 • Treatment and disposal of mixed low-level radioactive waste
- 8 • Treatment and disposal of low-level radioactive waste
- 9 • Treatment and storage of transuranic waste
- 10 • Storage of treated (vitrified) high-level waste canisters until a geologic
11 repository is available
- 12 • Treatment of nonwastewater hazardous waste

13 34. With respect to transuranic waste, the PEIS evaluated alternatives for
14 storage and treatment of transuranic waste located at sites across the DOE national
15 nuclear weapons complex. The PEIS evaluated alternatives for storage and treatment
16 on a centralized, regionalized, and decentralized basis.

17 35. The PEIS identified DOE's preferred alternative for treatment and
18 storage of transuranic waste as having nine major DOE sites (including Hanford) treat
19 and store their own waste onsite (decentralized basis), and for three sites (the Idaho
20 National Engineering Laboratory, Oak Ridge Reservation, and Savannah River Site)
21 to serve as regional treatment and storage facilities.
22

1 36. While the PEIS indicated it would be the basis for Records of Decision
2 on sites at which waste management activities would occur, the PEIS indicated that
3 decisions regarding the specific technologies to be employed, and actual locations of
4 waste management facilities at particular DOE sites, would not be made on the basis
5 of the PEIS, but rather on sitewide or project specific NEPA reviews.

6 37. On January 23, 1998, DOE published a Record of Decision on the
7 Treatment and Storage of Transuranic Waste (ROD). The ROD conveyed DOE's
8 decision that each of the DOE sites that had or would generate transuranic waste
9 would prepare and store its own transuranic waste on-site. The ROD noted that DOE
10 may, in the future, decide to ship some transuranic wastes from sites where it may be
11 "impractical" to prepare them for disposal to sites where DOE has or will have the
12 necessary capability. The ROD listed Hanford as among the sites that could receive
13 transuranic waste from other sites. However, the ROD indicated that "any future
14 decisions regarding transfers of [transuranic] wastes would be subject to appropriate
15 review under the National Environmental Policy Act."

16 38. DOE did not undertake the additional NEPA review contemplated by the
17 1998 ROD before deciding to transfer transuranic wastes to Hanford from other DOE
18 sites.

19 39. On May 15, 2002, DOE distributed its Draft Hanford Site Solid Waste
20 Environmental Impact Statement (EIS) (Dated April 2002). This Draft EIS indicates
21 that it is a tiered environmental review document intended to address local decisions
22 needed to implement the RODs issued pursuant to the PEIS. DOE has not yet

1 published a Final Hanford Site Solid Waste EIS. In fact, based on widespread public
2 and agency criticism of the Draft EIS, DOE has indicated that it intends to publish a
3 Revised Draft EIS in the spring of 2003. DOE intends to take public comment on the
4 Revised Draft EIS. Therefore, publication of the Final Hanford Site Solid Waste EIS
5 and subsequent ROD(s) will take several months.

6 40. On September 6, 2002, DOE published in the Federal Register a Notice
7 of a Revised Record of Decision for the Treatment and Storage of Transuranic Waste.
8 The Revised ROD was dated August 27, 2002. It indicated that DOE had decided to
9 transfer to Hanford 27 cubic meters of transuranic waste (including mixed waste)
10 from the Battelle Columbus Laboratory (Battelle) in Columbus, Ohio, and 9 cubic
11 meters of transuranic waste (including mixed waste) from the Energy Technology
12 Engineering Center (ETEC) in Canoga Park, California. A copy of the Revised ROD
13 is attached to this complaint.

14 41. According to the Revised ROD, DOE plans to ship from Battelle to
15 Hanford approximately 115 (55-gallon) drums of remote-handled transuranic waste
16 and approximately 10 drums of contact-handled transuranic waste. DOE has
17 informed the State that the waste contains the following radioactive constituents:
18 cesium, plutonium, strontium, curium, americium, cobalt, and uranium. Some of the
19 inventory may also be contaminated (mixed) with one or more of the following
20 hazardous waste constituents: barium, chromium, lead, mercury, silver, benzene,
21 carbon tetrachloride, methyl ethyl ketone, and trichloroethylene. Exposure to the
22 radiological components in these shipments could cause significant health effects,

1 including cancer and death. Exposure to the hazardous chemicals can be toxic to the
2 nervous system and the kidneys, as well as also posing cancer dangers.

3 42. According to the Revised ROD, DOE also intends to ship from ETEC to
4 Hanford approximately 15 to 34 drums of remote-handled transuranic waste and
5 approximately 11 drums of contact-handled transuranic waste. DOE has informed the
6 State that the waste includes the radioactive constituents plutonium, americium,
7 cesium, and strontium. Hazardous constituents include mercury, cadmium, copper,
8 lead, silver, mercury, and volatile organics. The ETEC waste also contains
9 Polychlorinated Biphenyls (PCBs). Exposure to these materials can cause serious
10 health effects. These materials pose significant risks to human health and the
11 environment. Ionizing radiation from the radioisotopes can cause cancer and death in
12 humans, acute radiation syndrome, and other significant health effects. The heavy
13 metal hazardous constituents, such as lead and mercury, are toxins that can affect the
14 central nervous system.

15 43. WIPP is not currently authorized by the State of New Mexico and the
16 EPA to accept remote-handled transuranic waste or transuranic waste contaminated
17 with PCBs. DOE does not expect to begin shipping remote-handled transuranic waste
18 to WIPP until late 2004 or 2005. However, there is no guarantee that WIPP will *ever*
19 accept remote-handled transuranic waste or transuranic waste contaminated with
20 PCBs. Thus, these wastes will be stored at Hanford indefinitely.

21 44. According to a briefing paper provided to the State by DOE,
22 "[P]otentially, any Site within the DOE Complex could ship [transuranic] waste to

1 Hanford." DOE has already identified fifteen sites, with a total of 1,596 cubic meters
2 (equivalent to 7,980 fifty-five gallon drums) of contact-handled transuranic waste that
3 it is considering shipping to Hanford. DOE has identified seven sites, with a total of
4 142 cubic meters (710 fifty-five gallon drum equivalents) of remote-handled
5 transuranic waste that it is considering shipping to Hanford.

6 45. On Thursday, October 24, 2002, the Federal Bureau of Investigation
7 issued a warning to state and local law enforcement officials about a possible terrorist
8 attack against transportation systems. While the primary focus of the warning was on
9 the nation's railroads, the report is a reminder of the need for heightened scrutiny of
10 terrorist risks to our nation's transportation system, particularly where radioactive and
11 hazardous substances are involved.

12 46. There is no compelling reason for DOE to ship these wastes to the
13 Hanford Site at this time. There are alternatives available to DOE, such as treating
14 and storing the wastes at their present location, pending shipment to and final disposal
15 at WIPP.

16 47. On Thursday, October 24, 2002, DOE informed Thomas Fitzsimmons,
17 Director of the Washington State Department of Ecology that the first shipment from
18 ETEC or Battelle would occur on November 5, 2002.

19 48. On Tuesday, October 29, 2002, upon learning that these shipments were
20 imminent, Washington State Governor Gary Locke and Attorney General Christine
21 Gregoire wrote to DOE Secretary Spencer Abraham. In their letter, the Governor and
22 Attorney General objected to the proposed shipments on the basis that DOE had not

1 made adequate progress addressing the transuranic waste already at Hanford, had not
2 clearly defined how much additional transuranic waste DOE intended to ship to
3 Hanford nor how it would be managed there, and had not fully considered the risks
4 associated with transporting such wastes to and managing them at Hanford.

5 49. On Wednesday, October 30, 2002, Mr. Fitzsimmons received via
6 facsimile a letter from Keith Klein, Manager of DOE's Richland (Hanford) Field
7 Office. The letter indicated that DOE would not ship any transuranic waste to Hanford
8 during the Week of November 4-8 as it had planned, and that DOE would provide a
9 one-week notice to the State prior to any shipments.

10 50. On Thursday, December 5, 2002, Mr. Fitzsimmons had a telephone
11 discussion with Jessie Roberson, DOE's Assistant Secretary for Environmental
12 Management. Ms. Roberson advised Mr. Fitzsimmons that DOE believed that it must
13 begin shipping transuranic waste to Hanford from DOE's ETEC facility in California
14 by Thursday, December 19, 2002. (This conversation did not constitute the seven-day
15 notice described in the preceding paragraph). During this discussion, Mr. Fitzsimmons
16 reiterated the State's concerns, as outlined in the Governor's and Attorney General's
17 letter, and advised Ms. Roberson that if they could not reach an accommodation of the
18 State's concerns, the State would file a lawsuit to stop the shipments until the State's
19 concerns were addressed.

20 51. On Wednesday, December 11, 2002, Mr. Fitzsimmons received via
21 facsimile a letter from Mr. Klein formally notifying the State of DOE's intent to begin
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1 shipping both Battelle and ETEC transuranic waste to Hanford on or after
2 Wednesday, December 18, 2002.

3 52. In an effort to avoid litigation between DOE and the State,
4 Mr. Fitzsimmons traveled to Washington D.C. and met with Ms. Roberson and other
5 senior DOE officials to discuss the matter on Friday, December 13, 2002.

6 53. During the December 13 meeting, Ms. Roberson made certain
7 commitments intended to address the State's concerns regarding the proposed
8 shipments of transuranic waste. DOE agreed to negotiate with the State and EPA new
9 requirements for retrieval, characterization, and management of transuranic wastes at
10 Hanford. These requirements would take the form of new milestones and the
11 modification of existing milestones under the HFFACO. The parties set March 1,
12 2003 as the deadline for reaching agreement on such requirements. Additionally,
13 DOE also committed that it would not proceed with any future shipments, beyond
14 those outlined in the August 27, 2002 Revised ROD, until March 1, 2003. DOE also
15 committed to revise, pursuant to public comment, and reissue a draft of the Hanford
16 Site Solid Waste EIS, and submit that revised draft for public comment. Finally, DOE
17 committed to pursue a collective dialogue with interested states with the objective of
18 developing strategies to guide and facilitate the disposition of transuranic waste
19 located throughout the DOE national complex.

20 54. In return for DOE's commitments as described above, Mr. Fitzsimmons
21 committed that the State of Washington would forgo, until March 1, 2003, litigation to
22 stop DOE shipments of transuranic waste described in the August 27, 2002 ROD.

1 55. DOE began shipping ETEC and Battelle transuranic waste to the
2 Hanford Site on or about December 20, 2002. On or about December 20, 2002,
3 Hanford received four shipments of transuranic waste, two each from ETEC and
4 Battelle. The Hanford Site received two additional shipments from Battelle on or
5 about February 6, 2003. To date, DOE has completed six shipments, containing a
6 total of 40 drums of transuranic waste, of which 13 drums are contact-handled and 27
7 are remote-handled transuranic waste.

8 56. Following the December 13, 2002 meeting, the State, EPA, and DOE
9 entered into a period of intensive negotiations. A fundamental premise of those
10 negotiations was that the resulting agreement would include HFFACO milestones for
11 retrieving, characterizing, and preparing (i.e., "certifying") Hanford Site transuranic
12 waste for shipment to WIPP for disposal.

13 57. On Thursday, February 27, 2003, after weeks of detailed negotiations
14 founded on these principles, and less than 48 hours prior to the March 1, 2003
15 deadline for completion of the negotiations, DOE notified State officials that it would
16 not agree to any enforceable milestones for certification of Hanford Site transuranic
17 waste for disposal at WIPP.

18 58. Having secured no enforceable commitments for certifying transuranic
19 waste already at Hanford, the State has no assurance that DOE will have the capability
20 in place at Hanford to prepare for shipment to WIPP transuranic waste sent to
21 Hanford from other DOE sites for "temporary" storage, let alone the approvals needed
22 to actually dispose of that waste at WIPP.

1 59. Additional shipments of transuranic waste to Hanford are imminent.
2 DOE has already notified the State that it intends to make two shipments of
3 transuranic waste from Battelle to Hanford to arrive on Wednesday, March 5, 2003,
4 and two more shipments from Battelle to arrive at Hanford on Wednesday, March 19,
5 2003. The State expects that DOE will notify it of additional shipments in the future.

6 **V. CLAIMS FOR RELIEF**

7 **COUNT 1: Violation of § 102(2)(C) of National Environmental Policy Act**

8 60. Plaintiff repeats and incorporates by reference the allegations contained
9 in paragraphs 1 through 59 above.

10 61. The NEPA, 42 U.S.C. §§ 4321 *et seq.*, requires that all federal agencies
11 prepare a detailed Environmental Impact Statement (EIS) on every proposal for a
12 major federal action significantly affecting the quality of the human environment.
13 42 U.S.C. § 4332(2)(C). The EIS must contain a detailed discussion of environmental
14 impacts (40 C.F.R. § 1502.16), including cumulative environmental impacts
15 (40 C.F.R. § 1508.7), alternatives to the proposed action (40 C.F.R. § 1502.14), and
16 appropriate measures to mitigate adverse environmental impacts (40 C.F.R.
17 § 1502.14, .16).

18 62. DOE's decision to transport to Hanford and to process and/or store at
19 Hanford, contact-handled and remote-handled transuranic and mixed transuranic
20 waste from other DOE sites is a major federal action significantly affecting the quality
21 of the human environment for which NEPA requires the preparation of an EIS.

1 63. The PEIS prepared by DOE in May 1997 was inadequate under NEPA to
2 support DOE's decision to transport to Hanford, and to process and/or store at
3 Hanford, transuranic and mixed transuranic waste from other DOE sites because the
4 PEIS did not adequately analyze alternatives for treatment and/or storage of said
5 waste at the Hanford Site, nor the cumulative impacts of adding additional waste to
6 Hanford—a facility that is already woefully out of compliance with environmental
7 requirements.

8 64. Although the PEIS indicated that future decisions regarding the transfer
9 of such wastes to Hanford and other sites would be made on the basis of appropriate
10 NEPA review, DOE did not conduct such a review prior to deciding to ship the wastes
11 to Hanford.

12 65. Given the large, complex nature of the Hanford Site, the multiple
13 treatment, storage, and disposal facilities at Hanford, the hundreds of contaminated
14 sites and waste streams, and the non-compliant storage of thousands of cubic meters
15 of transuranic waste already at Hanford, NEPA requires that DOE prepare a
16 programmatic EIS or a sitewide EIS before deciding to ship additional transuranic
17 wastes across the country for indefinite storage and for treatment at Hanford. DOE's
18 own regulations, at 10 C.F.R. § 1021.330, require the preparation of such a site-wide
19 analysis, and require that it be updated at least every five years. To date, DOE has
20 failed to do either.

21 66. NEPA likewise requires that DOE consider the cumulative impacts on
22 the environment that result from managing at the Hanford Site all transuranic waste

1 that DOE reasonably foresees it may send to or otherwise manage at Hanford, as well
2 as the cumulative effects in relation to the management of the wastes already at the
3 Hanford Site. To date DOE has failed to do so.

4 67. The PEIS was an inadequate basis for DOE's August 27, 2002 decision
5 to ship transuranic waste to Hanford because it relied on out-of-date information
6 concerning transportation of this waste and its potential impacts. The census data
7 used to evaluate these factors was from 1990, and populations along the likely
8 transportation corridors, and nearby the Hanford Site, have increased significantly
9 since 1990.

10 68. NEPA requires that DOE prepare a supplemental EIS if DOE makes
11 substantial changes in the proposed action that are relevant to environmental concerns,
12 or where there are significant new circumstances or information relevant to
13 environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R.
14 § 1502.9; 10 C.F.R. § 1021.314.

15 69. The increases in populations along the likely transportation corridors and
16 near the Hanford Site since 1990, coupled with the heightened risk of terrorist attacks
17 to transportation of radioactive and hazardous wastes, are significant new
18 circumstances and information relevant to environmental concerns and bearing on
19 DOE's proposed action and its impacts. DOE is therefore required to prepare a
20 supplemental EIS prior to its decision to transport transuranic waste to Hanford for
21 treatment and/or storage. The supplemental EIS should evaluate all alternatives for
22

1 storage and treatment of transuranic wastes pending final disposition at WIPP.
2 DOE has failed to prepare such a supplemental EIS.

3 70. By virtue of DOE's failure to comply with NEPA, DOE's decision to
4 ship additional transuranic wastes to Hanford without adequately analyzing
5 alternatives to the treatment and/or storage at the Hanford Site, without adequately
6 considering the cumulative impacts of adding additional waste to Hanford, and
7 without preparing a supplemental EIS based on significant new circumstances and
8 information not fully informed, incomplete, and inadequate.

9 71. By virtue of DOE's failure to comply with NEPA, the public has been
10 denied the opportunity to review and comment on DOE's plan to transport transuranic
11 wastes to Hanford, and on how DOE intends to store and treat such wastes once they
12 arrive at the Hanford Site. Compliance with the procedural requirements of NEPA
13 will ensure that DOE's plan is subject to public scrutiny.

14 72. Washington State will suffer irreparable harm in the event that DOE is
15 permitted to ship additional transuranic wastes from other DOE sites for indefinite
16 storage and treatment at Hanford without first complying with NEPA's procedural
17 requirements for assessment of potential adverse environmental impacts. Such harm
18 includes the risks of contamination of state-owned groundwater, contamination of the
19 Columbia River, potential contamination of drinking water, disruption of state roads
20 and highways, and potential public health and environmental impacts in the event of a
21 release of radioactive or hazardous wastes during transportation of the wastes to
22 Hanford or while the waste is at the Hanford Site.

1 73. Moreover, once the waste is shipped to Hanford, it will be difficult
2 (if not impossible) to send it back, because DOE intends to close the sites from which
3 it came. Moreover, because WIPP does not currently accept remote-handled
4 transuranic waste, or transuranic waste contaminated with PCBs, and there is no
5 guarantee that it will ever do so, shipment of the transuranic waste to Hanford will
6 result in indefinite, if not permanent storage or disposal of the waste at the Hanford
7 Site.

8 **COUNT 2: Violation of the Administrative Procedures Act**

9 74. Plaintiff repeats and incorporates by reference the allegations contained
10 in paragraphs 1 through 73 above.

11 75. Due to Defendants' knowing and conscious failure to comply with
12 NEPA, Plaintiff has suffered legal wrongs because of agency action, and is adversely
13 affected and aggrieved by agency action within the meaning of the APA, 5 U.S.C.
14 § 702.

15 76. Defendants' knowing and conscious failure to comply with NEPA is
16 arbitrary and capricious, an abuse of discretion, not in accordance with law, and
17 without observance of procedure required by law within the meaning of the APA,
18 5 U.S.C. § 706(2), and should therefore be declared unlawful and set aside by this
19 Court.

1 **COUNT 3: Violations of the Washington Hazardous Waste Management Act**
2 **LDR Storage Prohibition**

3 77. Plaintiff repeats and incorporates by reference the allegations contained
4 in paragraphs 1 through 76 above.

5 78. The HWMA, Wash. Rev. Code 70.105, through its implementing
6 regulation, Wash. Admin. Code § 173-303-140(2)(a) (incorporating by reference
7 40 CFR § 268.50), prohibits the storage of hazardous wastes restricted from land
8 disposal (LDR Wastes) pursuant to 40 CFR §§ 268.30-268.39 unless the storage is
9 solely for the purpose of accumulating such quantities of the hazardous waste as
10 necessary to facilitate proper recovery, treatment, or disposal. Mixed transuranic
11 wastes from Battelle and ETEC are restricted from land disposal pursuant to 40 CFR
12 §§ 268.30-268.39. Mixed transuranic wastes from Battelle and ETEC will not be
13 stored at Hanford solely for the purpose of the accumulation of such quantities as
14 necessary to facilitate proper recovery, treatment, or disposal. Such storage will thus
15 violate Wash. Admin. Code § 173-303-140(2)(a) (incorporating by reference 40 CFR
16 § 268.50).

17 79. Moreover, since 1970, DOE began storing transuranic and other
18 radioactive waste in boxes and drums that it buried in unlined trenches at the Hanford
19 Site. Today, approximately 15,000 cubic meters (the equivalent of 75,000 55-gallon
20 drums) of this waste remains in so-called "retrievable storage" at Hanford. DOE is
21 also storing additional volumes of mixed transuranic waste in various facilities at
22 Hanford, including T-Plant, the Central Waste Complex, the Purex Tunnels, the

1 Plutonium Finishing Plant, the 325 Hazardous Waste Treatment Unit, the Waste
2 Receiving and Processing Facility, and the 324 Building. These wastes are stored in
3 violation of RCRA and HWMA requirements, including the storage prohibition
4 referred to in Paragraph 78 of the State's First Amended Complaint, that have applied
5 to this waste since at least 1987.

6 80. As of March 4, 2003, when the State filed this lawsuit, under DOE's
7 plans—for which there were no enforceable commitments in place—DOE would not
8 complete retrieval and preparation for shipment of retrievably stored transuranic waste
9 until 2024, and would not begin retrieval of remote handled transuranic waste until
10 2013.

11 81. On March 10, 2003, the Director of Ecology issued a "Final
12 Determination" pursuant to the HFFACO in the matter of HFFACO Milestone Series
13 M-91, and Hanford Site Transuranic and Mixed Transuranic Wastes.

14 82. On April 9, 2003, the United States filed separate Complaints against the
15 State in the United States District Court for the Eastern District of Washington (Cause
16 No. CT-03-5038-EFS) and in the Superior Court of Washington for Benton County
17 (Cause No. 03-2-00722-3), challenging said Final Determination.

18 83. On April 30, 2003, Ecology issued to DOE Administrative Order
19 No. 03NWPKW-5494, establishing a compliance schedule for the retrieval,
20 designation, and treatment (and, in the case of mixed transuranic wastes, treatment, or
21 certification) of DOE's "retrievably stored" waste, and for treatment of certain other
22 mixed waste stored at DOE's Hanford Site.

1 84. On or about May 29, 2003, DOE appealed the Administrative Order
2 referred to in Paragraph 83 of the State's First Amended Complaint, to the
3 Washington State Pollution Control Hearings Board (Matter No. PCHB No. 03-079).

4 85. In the litigation matters referred to in Paragraphs 82 and 84 of the State's
5 First Amended Complaint, DOE challenges Ecology's authority to apply treatment or
6 certification requirements, and LDR storage prohibitions, to DOE's mixed transuranic
7 waste.

8 86. The United States and the State have entered into a settlement of the
9 litigation matters referred to in Paragraphs 82 and 84 of the State's First Amended
10 Complaint. As part of their settlement, the United States and the State have agreed to
11 add to the HFFACO compliance schedules for the retrieval and designation of DOE's
12 "retrievably stored" waste, and for the treatment of certain other mixed waste stored at
13 the Hanford Site.

14 87. Because the United States and the State disagree over whether the State
15 has legal authority to require DOE to treat or certify retrievably stored waste and other
16 stored waste determined to be mixed transuranic waste, the United States and the State
17 have conditioned the applicability of specified agreed to HFFACO requirements
18 regarding the storage and treatment or certification of transuranic mixed waste on the
19 outcome of this Court's ruling as to the scope and applicability of the exemption for
20 "transuranic mixed waste designated by the Secretary [of Energy] for disposal at
21 WIPP" contained in the 1996 WIPP Land Withdrawal Act Amendments.

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WHEREFORE, Plaintiff respectfully requests that this Court,

1. Declare that Defendants' 1997 Programmatic Waste Management EIS is inadequate to support Defendants' decision, manifested in DOE's September 6, 2000 Revised Record of Decision (ROD), to ship to the Hanford Site for treatment and storage off-site transuranic and mixed transuranic waste. Declare that DOE's action therefore violates NEPA and the APA and, consequently, is null and of no effect;

2. Declare that Defendants' continued storage of untreated mixed organic waste at the Hanford Site, and storage at Hanford of additional off-site organic mixed waste violates the HWMA's LDR storage prohibition contained in Admin. Code 173-303-140(2)(a);

3. Grant Plaintiff preliminary injunctive relief, enjoining Defendants from sending any additional transuranic waste or mixed transuranic waste to Hanford during the pendency of this litigation;

4. Issue a permanent mandatory injunction requiring Defendants to rescind the September 6, 2002 Revised ROD to ship transuranic and mixed transuranic waste to Hanford for treatment and/or storage, and prohibiting DOE from shipping such waste to the Hanford Site until Defendants have complied with the following requirements:

a. Defendants have complied with the APA, NEPA, and NEPA implementing regulations, including i) preparation of a supplemental EIS that relies

1 on current risk information (including the risk of terrorism and sabotage) and current
2 census data to assess the risks associated with transport of the subject wastes to the
3 Hanford Site; ii) preparation of an adequate Hanford Site Solid Waste Program EIS,
4 that evaluates alternatives and impacts associated with storage and treatment of
5 off-site transuranic and mixed transuranic waste at Hanford, including impacts on
6 cleanup at the Hanford Site and on DOE's ability to come into compliance with the
7 HWMA and RCRA requirements with respect to the management of wastes at
8 Hanford; and iii) the publication of a lawful ROD based on consideration of the above
9 environmental documents;

10 b. Defendants have fully complied with the HWMA LDR storage
11 prohibition on continued storage of untreated LDR restricted waste.

12 5. Allow Plaintiff to recover the costs of this action, including attorney's
13 fees;

14 6. Grant such other and further relief as the Court deems just and proper.

15 DATED this ____ day of _____, 2003.

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